

10628-A  
RECORDATION NO. .... Filed 1425

JUL 16 1979 12 09 PM

Interstate Commerce Commission  
Washington, D. C.

Gentlemen:

Enclosed for recordation under the provisions of 49 USC Section 11303(a), are the original and three counterparts each of a Conditional Sale Agreement dated as of December 20, 1978 and an Agreement and Assignment dated as of December 20, 1978 relating thereto.

The general description of the railroad equipment covered by the enclosed documents is set forth in Schedules A and B attached to this letter and made a part hereof.

The names and addresses of the parties are:

Owner-Vendors under  
Conditional Sale Agree-  
ment and Assignors under  
Agreement and Assignment:

ACF Industries, Inc.  
750 Third Avenue  
New York, New York 10017

Ortner Freight Car Company  
2652 Erie Avenue  
Cincinnati, Ohio 45208

Vendee under  
Conditional Sale  
Agreement:

First Maryland Leasecorp  
25 South Charles Street  
Baltimore, Maryland 21203

Assignee under  
Agreement and  
Assignment:

First Security Bank of Utah, N.A.  
79 South Main Street  
Salt Lake City, Utah 84111

The undersigned is the Vendee named above and has knowledge of the matters set forth in the enclosed documents.

Please return the original and two copies of the Conditional Sale Agreement and the Agreement and Assignment to Gary Green, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

FIRST MARYLAND LEASECORP

By

Its

VENDEE AS AFORESAID

Enclosures

10628  
REGISTRATION NO. .... Filed 1425

JUL 16 1979 12 22 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of December 20, 1978

Among

ACF INDUSTRIES, INC.

and

ORTNER FREIGHT CAR COMPANY

Manufacturers

and

FIRST MARYLAND LEASECORP

Vendee

---

(KATY No. 79-1)  
(100 Covered Hopper & 100 Gondola Cars)

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### ATTACHMENTS TO CONDITIONAL SALE AGREEMENT:

Schedules A and B -- Descriptions of Equipment  
Schedule C -- Amortization Schedule

## CONDITIONAL SALE AGREEMENT

This CONDITIONAL SALE AGREEMENT dated as of December 20, 1978 among ACF INDUSTRIES, INC. and ORTNER FREIGHT CAR COMPANY (said parties being hereinafter sometimes collectively referred to as the "Manufacturers" and individually as a "Manufacturer") and FIRST MARYLAND LEASECORP (the "Vendee");

### R E C I T A L S:

Each Manufacturer is willing to construct, sell and deliver to the Vendee, and the Vendee is willing to purchase, the railroad equipment to be built by such Manufacturer as described in Schedules A and B attached hereto (collectively the "Equipment" or "Items" and individually "Item of Equipment" or "Item").

The following terms shall have the following meanings unless the context shall otherwise require:

1. "Participation Agreement" shall mean the Participation Agreement dated as of December 20, 1978 among the Lessee, the Vendee, the Assignee and the parties named in Schedule 1 thereto (the "Investors").

2. "Assignment" shall mean the Agreement and Assignment dated as of December 20, 1978 between the Manufacturers and the Assignee.

3. "Assignee" shall mean First Security Bank of Utah, N.A., as agent and assignee under the Assignment, and its successors in interest thereunder.

4. "Lease" shall mean the Equipment Lease dated as of December 20, 1978 between the Vendee, as lessor, and the Lessee.

5. "Lessee" shall mean MISSOURI-KANSAS-TEXAS RAILROAD COMPANY.

In consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

### SECTION 1. CONSTRUCTION AND SALE.

Each of the Manufacturers will construct, sell and deliver to the Vendee, and the Vendee will purchase from such Manufacturer and accept delivery of and pay for as hereinafter provided, those Items of Equipment which are indicated on Schedules



A and B to be constructed and sold by such Manufacturer, each Item of which shall be constructed in accordance with the applicable specifications referred to in said Schedules A and B with such modifications thereof as may be agreed upon in writing by the Vendee and the Manufacturer thereof (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design and quality of equipment and material used in the manufacture of such Items shall conform to all Department of Transportation requirements and specifications for new equipment, and to all standards recommended by the Association of American Railroads, interpreted as being applicable to the new railroad equipment of the character of such Items as of the date of this Agreement.

## SECTION 2. DELIVERY.

2.1. Each Manufacturer will deliver the various Items of Equipment to be manufactured by it to the Vendee in accordance with the delivery schedule set forth in Schedules A and B attached hereto; provided, however, that the Manufacturers shall have no obligation to deliver any Item of Equipment hereunder if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute an Event of Default, has occurred and is continuing.

2.2. Each Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Manufacturer's reasonable control, including, but not limited to, act of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riots or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

2.3. Notwithstanding the foregoing provisions, in this Section 2, the Vendee shall not be obligated hereunder to accept and pay for any Equipment not delivered and accepted on or before the outside delivery date provided therefor in Schedule A or Schedule B as the case may be attached hereto. Any Equipment not so delivered and accepted pursuant to the first sentence of this Section 2.3 and any Equipment not so delivered and accepted pursuant to Sections 2.1 and 2.4 hereof shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Vendee and such Manufacturer shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not excluded herefrom, and such Manufacturer agrees to look solely to the obligations of the Lessee pursuant to Section 1.4 of the Lease in respect of such excluded Item of Equipment.

2.4. The Equipment during construction shall be subject to inspection by one or more inspectors or other authorized representatives of the Lessee and the Vendee. Upon completion of each Item of Equipment by the Manufacturer thereof, it shall

be presented to such inspectors or representatives for inspection at the place designated herein for delivery of such Item of Equipment. Acceptance of any Items of Equipment by the Lessee under Section 1.2 of the Lease shall be deemed to be acceptance of such by the Vendee hereunder, and the Lease will provide that the Lessee shall furnish the Certificate or Certificates of Acceptance, on behalf of the Lessee and on behalf of the Vendee, to the Manufacturer of an Item in such number of counterparts as may be reasonably requested.

2.5. The Manufacturer of each Item of Equipment shall bear the risk of loss of each Item of Equipment or damage thereto until delivery to and acceptance by the Lessee pursuant to the Lease. Upon delivery and acceptance by the Lessee of each such Item of Equipment the Vendee shall bear the risk of loss of or damage to such Item as between the Vendee and the Manufacturer thereof.

### SECTION 3. PURCHASE PRICE AND PAYMENT.

3.1. The estimated price per Item of Equipment, including freight charges, if any, to place of delivery, but exclusive of interest and all other charges, is as set forth in Schedules A and B attached hereto. The estimated price per Item of Equipment shall be subject to increase or decrease as provided by the prior contractual arrangements with the Manufacturer (the "Purchase Agreements") or as may otherwise be agreed to by the Manufacturer thereof, the Lessee and the Vendee, and the term "Purchase Price" as used herein shall mean the estimated price as so increased or decreased; provided that the Purchase Price for any Item of Equipment manufactured by Ortner Freight Car Company shall not exceed \$34,500, the Purchase Price for any Item of Equipment manufactured by ACF Industries Inc. shall not exceed \$35,200 and the Purchase Price for all Equipment shall not exceed the sum of \$6,970,000. If the Purchase Price of any Item of Equipment then ready to be delivered by a Manufacturer hereunder and under the Lease would, upon such delivery, cause the aggregate Purchase Price for all Items of Equipment theretofore delivered hereunder, when taken together with the Purchase Price of such additional Item of Equipment, to exceed the sum of \$6,970,000 for all Items of Equipment, then each Manufacturer agrees that it will withhold delivery of such Item of Equipment and all other Items of Equipment then remaining undelivered hereunder and under the Lease and the Vendee and the Manufacturers agree that such Item or Items of Equipment will be excluded from this Agreement and the Manufacturer agrees to look solely to the obligation of the Lessee pursuant to Section 1.4 of the Lease in respect of such excluded Equipment.

3.2. For the purpose of making settlement for the Equipment, the Equipment shall be divided into not more than five groups of Items of Equipment, or such other number as shall be agreed to by the parties hereto (each such group of Items being hereinafter called a "Group").

3.3. The Vendee hereby acknowledges itself to be indebted to the respective Manufacturers in the amount of, and hereby promises to pay to the respective Manufacturers at such bank or trust company in the United States as each of the Manufacturers or its assignee shall designate for payment to it in funds payable by check drawn on a bank within the Continental United States, the Purchase Price of the Items of Equipment in each Group, as follows:

(a) On the Closing Date for the Group for which settlement is then being made, an amount equal to 33.2593% of the Purchase Price of the Items of Equipment in such Group; and

(b) An amount equal to the difference between the entire Purchase Price of the Items of Equipment in such Group and the amount paid pursuant to subparagraph (a) above (such amount sometimes hereinafter referred to as the "Conditional Sale Indebtedness") plus interest on the unpaid balance thereof payable in installments as follows:

(1) One installment of interest only at the rate of 10-3/4% per annum for the period from and including the Closing Date as defined in the to Participation Agreement to but not including the Term Lease Commencement Date (as defined in the Lease), payable on the Term Lease Commencement Date, followed by

(2) Fifty (50) quarterly installments, each including both principal and interest at the rate of 10-3/4% per annum, the first such installment payable three months following the installment of interest only referred to in clause (1) above and the remaining such installments to be payable at three-month intervals thereafter in amounts in accordance with the Amortization Schedule C attached thereto, followed by

(3) A final installment, due and payable three months following the final installment referred to in clause (2) above, in an amount equal to the entire principal of and interest remaining unpaid on the Conditional Sale Indebtedness on said date.

3.4. The term "Closing Date" with respect to each Group shall mean such date not later than March 31, 1980 which is not more than ten business days following presentation by the Manufacturer or Manufacturers, as the case may be, of the Items of Equipment included in such Group to the Lessee of those items required to be delivered by the Manufactuer pursuant to the Participation Agreement as shall be fixed by the Lessee by written or telegraphic notice

delivered to such Manufacturer or Manufacturers and any assignee and Vendee thereof at least five business days prior to the Closing Date designated therein. Prior to the first Closing Date, the Vendee shall furnish to the Manufacturer a Kentucky Sales Tax Exemption Certificate in form and substance satisfactory to the Manufacturer's counsel, certifying that all Equipment being purchased pursuant to this Agreement is exempt from the application of the Kentucky sales tax.

3.5. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of Utah, Maryland or Texas are authorized or required to close. If any date on which a payment is to be made hereunder is not a business day, the amount otherwise payable on such date shall be payable on the next succeeding business day, and no interest on such amount shall accrue for the period from and after the nominal date for payment thereof to such next succeeding business day.

3.6. Interest under this Agreement shall be determined on a basis of a 360-day year of twelve 30-day months except that interest on the interim installment provided for in Section 3.3 (b)(1) hereof shall be determined on an actual day basis of a 365 day year.

3.7. The Vendee will pay interest at the rate of 11-3/4% per annum upon all unpaid balances of indebtedness and (to the extent legally enforceable) upon interest, after the same shall have become due and payable pursuant to the terms hereof.

3.8. All payments provided for in this Agreement shall be made by the Vendee in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

3.9. Except as provided in Section 6 and Section 14.3, the Vendee shall not have the privilege of prepaying any installment of the indebtedness prior to the date it becomes due hereunder.

#### SECTION 4. TITLE TO THE EQUIPMENT.

4.1. Title to the Equipment shall pass to the Vendee subject to retention of security title by each Manufacturer in the Equipment built by it until the Vendee shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee as herein provided. Any and all additions to the Equipment which become the property of the Vendee pursuant to the Lease

and any and all additions to the Equipment and replacements of parts thereof shall constitute accessions to the Equipment and shall be subject to all terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

4.2. When and only when each Manufacturer shall have been paid in full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided and all the Vendee's other obligations herein contained shall have been performed, absolute right to the possession of, absolute title to and property in the Equipment shall pass to and vest in the Vendee or its successors or assigns without further transfer or action on the part of such Manufacturer except that each Manufacturer, if requested by the Vendee so to do, will execute a bill or bills of sale of the Equipment releasing its security title thereto and property therein to the Vendee or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address specified in Section 19 hereof, and will execute in the same manner and deliver at the same place, for filing, registering, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment, and will pay to the Vendee any money paid to such Manufacturer, pursuant to Section 6 hereof and not therefore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand by the Vendee.

#### SECTION 5. MARKING OF EQUIPMENT.

The Vendee will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedules A and B hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon both sides of each Item of Equipment in letters not less than one inch in height, the words "Unit Subject to Security Interest of Agent Bank under Conditional Sale Agreement Recorded with the I.C.C.", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security title of the Manufacturer thereof to such Item of Equipment, its rights under this Agreement and the rights of any assignee under Section 14 hereof.

## SECTION 6. CASUALTY OCCURRENCES.

6.1. In the event that any Item of Equipment shall be or become lost, stolen, destroyed or, in the reasonable opinion of the Lessee pursuant to Section 11.2 of the Lease, irreparably damaged or permanently rendered unfit for use from any cause whatsoever during the term of this Agreement, or title or use thereof shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise during the term of this Agreement for a stated period which exceeds the then remaining term of the Lease (any such occurrence being hereinafter referred to as a "Casualty Occurrence"), the Vendee shall promptly and fully (after it has actual knowledge of such Casualty Occurrence), inform the Manufacturer thereof in regard thereto. When any Item of Equipment suffers a Casualty Occurrence the Vendee, on the next following due date for Conditional Sale Indebtedness following its determination that a Casualty Occurrence has taken place with respect to any Item of Equipment shall pay to the Manufacturer thereof the Casualty Payment (as defined in Section 6.4 hereof) of such Item as of the date of such payment. Each such payment shall be accompanied by notification from the Vendee identifying the amount thereof and stating that said payment constitutes a Casualty Payment.

6.2. Such Manufacturer shall, immediately upon receipt thereof, apply the money deposited pursuant to Section 6.1 to the prepayment of that portion of the Conditional Sale Indebtedness in respect of the Purchase Price of any Items of Equipment having suffered a Casualty Occurrence, plus interest then accrued on the portion thereof so prepaid, but without premium. The quarterly payments of principal of and interest on the Conditional Sale Indebtedness relating to the remaining Equipment and interest thereon becoming due thereafter shall be redetermined on the basis of the amount of such Conditional Sale Indebtedness remaining unpaid and on the basis of the number of quarterly payments remaining immediately after such application. Promptly following such redetermination, the Vendee will furnish to the Assignee and the Lessee a revised schedule of payments of principal and interest thereafter to be made hereunder in such number of counterparts as any such party may reasonably request.

6.3. Upon payment to such Manufacturer of the Casualty Payment in respect of an Item of Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such Item shall automatically pass to and vest in the Vendee without further transfer or action on the part of the Manufacturer thereof. Such Manufacturer, if requested by the Vendee, will execute and deliver to the Vendee, at its address specified in Section 18 hereof, at the reasonable expense of the Vendee, appropriate instruments confirming such release to the Vendee of security title to and property in such Item, free of all liens and encumbrances created or retained hereby, in

recordable form in order that the Vendee may make clear upon the public records the title of the Vendee to such Item.

6.4. The Casualty Payment in respect of each Item of Equipment having suffered a Casualty Occurrence shall be deemed to be that portion of the Conditional Sale Indebtedness related to such Item remaining unpaid on the date as of which such Casualty Payment shall be determined, plus interest accrued thereon but unpaid as of such date.

6.5. In the event that during the term of the Lease the use of or title to any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise, for an indefinite period or for a stated period which does not exceed the term of the Lease, then the Vendee's duty to pay the indebtedness in respect of the Purchase Price thereof shall continue for the duration of such requisitioning or taking. The Vendee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

#### SECTION 7. REPORTS AND INSPECTIONS.

Each Manufacturer shall have the right, by its agents, to inspect the Items of Equipment built by it whenever available for such inspection and to further inspect the records of the Vendee with respect thereto once in every year at reasonable times.

#### SECTION 8. POSSESSION AND USE.

8.1. The Vendee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturers to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

8.2. The Vendee may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in Section 17 of the Lease, and it is hereby acknowledged and agreed that the rights of the Manufacturers under this Agreement are subject to the rights and interest of the Lessee under the Lease. A copy of any assignment made by the Lessee pursuant to Section 17 of the Lease of any consent thereunder shall be furnished to the Manufacturer; provided that each Manufacturer hereby acknowledges receipt of an executed copy of the Lease. The Lease shall not be amended or terminated without the prior written consent of each Manufacturer, which consent shall not be unreasonably withheld.

#### SECTION 9. PROHIBITION AGAINST LIENS.

9.1. The Vendee will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Vendee or its

successors or assigns (other than the Lessee or their respective assigns) which, if unpaid, might become a lien or a charge upon any Item of Equipment equal or superior to the security title of the Manufacturer, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

9.2. This covenant will not in any event be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

#### SECTION 10. INDEMNITIES.

10.1. The Vendee shall cause the Lessee to assume all risk and expense arising from the possession, use, operation and maintenance of the Equipment.

10.2. Except to the extent provided in Section 2.5 hereof, the Vendee will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Item or of all the Equipment.

10.3. The warranties of each Manufacturer with respect to defects in material or workmanship of the Items of Equipment to be built by such Manufacturer are set forth in Annex A hereto.

#### SECTION 11. PATENT INDEMNITIES.

11.1. Except in cases of designs specified by the Lessee and not developed or purported to be developed by a Manufacturer, and articles and materials specified by the Lessee and not manufactured by such Manufacturer, such Manufacturer agrees to indemnify, protect and hold harmless the Vendee and the Lessee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee because of the use, in or about the construction or operation of any Item of Equipment to be built by such Manufacturer, of any design, article or material which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. In case any Item of Equipment is held to constitute infringement of any patent or any similar right in respect of which liability may be charged against a Manufacturer, and the use of any Item of Equipment to be built by such Manufacturer is enjoined, such Manufacturer shall, at its own expense and at its option, either procure for the Vendee and the Lessee the



right to continue using such Item of Equipment or replace the same with noninfringing equipment or modify it so that it becomes noninfringing. Without intending any limitation of the foregoing, each Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right and cause of action hereinafter referred to, transfer, assign, set over and deliver to the Vendee every claim, right and cause of action which such Manufacturer has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by such Manufacturer for use in or about the construction or operation of the Items of Equipment to be built by such Manufacturer on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right and each Manufacturer further agrees to execute and deliver to the Vendee all and every such further assurance as may be reasonably requested by the Vendee, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. Each Manufacturer will give notice to the Vendee of any claim known to such Manufacturer from which liability may be charged against the Vendee hereunder and the Vendee will give notice to each Manufacturer of any claim known to it from which liability may be charged against such Manufacturer hereunder.

11.2. The term "design" wherever used in this Agreement or in any assignment of this Agreement shall be deemed to include formulae, systems, processes and combinations.

11.3. The obligations and liabilities of the Manufacturer under this Section shall apply only to Equipment located and used in the continental United States, Canada and Mexico.

11.4. It is hereby agreed that the Lessee shall be and it is hereby constituted a third party beneficiary to each of the covenants and agreements of the Manufacturers expressed in this Section 11.

## SECTION 12. ASSIGNMENTS.

12.1. The Vendee will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in the Lease and the Participation Agreement, transfer the right to possession of any Item of Equipment without first obtaining the written consent of the Manufacturers, which consent shall not be unreasonably withheld. No such sale, assignment or transfer shall subject the Manufacturers to any duty, obligation or liability whatsoever.

12.2. All or any of the rights, benefits and advantages of the Manufacturers under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned

by the Manufacturers and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturers from, any of the obligations of the Manufacturers to construct and deliver the Equipment in accordance with Sections 1 and 2.1 hereof, or to respond to its warranties and indemnities contained in Sections 11.3 and 12 hereof, or relieve the Vendee of its obligations to the Manufacturers hereunder.

12.3. Upon any such assignment either the assignor or the assignee shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Manufacturers' right security title and interest in and to the Equipment subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee, of the notification of any such assignment, all payments thereafter to be made by the Vendee hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

12.4. The Vendee recognizes that it is the custom of equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or some or all of the rights of the Manufacturers hereunder, is contemplated. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Manufacturers hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Manufacturers as hereinbefore provided the rights of such assignee to the entire unpaid Conditional Sale Indebtedness or such part thereof as may be assigned, together with the interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of any Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by any Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against such Manufacturer.

12.5. In the event of any such assignment or successive assignments by the Manufacturers of security title to the Equipment and of the rights thereof hereunder with respect thereto, the Vendee will, whenever requested by such assignee, change the names and word or words to be marked on each side of each Item of Equipment or, in the event such Item shall then be leased to the Lessee, the Vendee will use its best efforts to cause the Lessee pursuant to Section 4 of the Lease to change the names and word or words to be marked on each side of such Item, so as to indicate the security title of such assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the

laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such names and word or words with respect to the first assignee of this Agreement (or to a successor agent or trustee in case the first assignee is an agent or trustee) and with respect to the Vendee shall be borne by the Manufacturer. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent or trustee if the first assignee is an agent or trustee) will be borne by the subsequent assignee.

12.6. In the event of any such assignment prior to the completion of delivery of the Equipment, the Vendee will, in connection with settlement for any Group of Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date with respect to such Group, all documents reasonably required by the terms of such assignment to be delivered by the Vendee to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested.

12.7. Nothing in this Section 12 shall be deemed to restrict the right of the Vendee to assign or transfer its interest under this Agreement in the Equipment to any corporation into or with which the Vendee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the property of the Vendee, provided that such assignee, successor or transferee shall have duly assumed the obligations of the Vendee hereunder and that it will not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Agreement and that such merger or consolidation or acquisition of properties shall not alter in any way the Vendee's obligations hereunder which shall be and remain those of a principal and not a guarantor.

SECTION 13. APPLICATION OF PROVISIONS OF SECTION 14, "DEFAULTS", AND SECTION 15, "REMEDIES".

It is contemplated that each Manufacturer will, coincidentally with the execution and deliver of this Agreement, assign certain of its rights under this Agreement, and all its respective right, security title and interest in and to the Equipment to the Agent. It is desired by the parties hereto that the Agent should upon such assignment be entitled to enforce any remedies in case of default by the Vendee in respect of its obligations under this Agreement with any of the Manufacturers as if such breach were a default in respect of the Vendee's obligations under this Agreement with each of the Manufacturers. Accordingly, on the assumption that such assignments to the Agent will be made by each Manufacturer, the defaults and the remedies therefor as set forth in Sections 14 and 15 hereof are set forth as if there were a single Manufacturer.

SECTION 14. DEFAULTS.

14.1. In the event that any one or more of the following events of default ("Events of Default") shall occur and be continuing, to-wit:

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due under Section 3 or 6 hereof and such default shall continue for ten days; or

(b) The Vendee shall fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Manufacturer for such compliance for more than 30 days after written notice from the Manufacturer specifying the default and demanding the same to be remedied; or

(c) Any representation or warranty made by the Vendee herein or in any statement or certificate furnished to the Manufacturer or any assignee of the Agreement, the Agreement and Assignment, the Lease or the Participation Agreement proves untrue in any material respect as of the date of issuance or making thereof; or

(d) An Event of Default (as defined in the Lease) shall have occurred and be continuing under the Lease; or

(e) The Vendee becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they may mature, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for the Lessee or for the major part of its property; or

(f) A trustee or receiver is appointed for the Vendee or for the major part of its property and is not discharged within sixty (60) days after such appointment; or

(g) Any other proceedings shall be commenced by or against the Vendee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and (unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Vendee under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by

trustee or trustees or receiver or receivers appointed for the Vendee or for the property of the Vendee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(h) The Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Item of Equipment;

then at any time after the occurrence and during the continuance of such an Event of Default the Manufacturer may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 11-3/4% per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled subject to the provisions of Section 25 of this Agreement to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of the Vendee's interest in the Equipment.

14.2. The Manufacturer may waive any such Event of Default and its consequences and rescind and annul any such declaration by notice to the Vendee in writing to that effect. Upon any such waiver the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

14.3. Any default under Section 14.1(d) hereunder shall be deemed cured and not continuing if the Vendee, prior to any sale by the Manufacturer of the Equipment as provided in Section 15.3, shall pay or cause to be paid to the Manufacturer the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement.

14.4. Except as hereinafter provided, if an Event of Default under the Lease of which the Manufacturer has knowledge shall have occurred and be continuing the Manufacturer shall give the Vendee not less than 10 days' prior written notice of the date (the "Enforcement Date") on which the Manufacturer will exercise any remedy or remedies pursuant to Sections 14.1 and 15 hereof.

In the event of the occurrence of an Event of Default in respect of the payment of Fixed Rental under the Lease (as defined therein) on the day it becomes due and payable (unless there shall have occurred and be continuing any Event of Default under the Lease other than a failure to pay Fixed Rental), the Vendee may, prior to the Enforcement Date, pay to the Manufacturer an amount equal to any principal and interest (including interest, if any, on overdue payments of principal and interest) then due and payable on the Conditional Sale Indebtedness, and such payment by the Vendee shall be deemed to cure any Event of Default under this Agreement which would otherwise have arisen on account of the non-payment by the Lessee of such installment of Fixed Rental under the Lease; provided, however, that the Vendee may not exercise such right in respect of more than two consecutive Fixed Rental payment defaults or in any event more than a total of four times throughout the term of the Lease.

Except as hereinafter in this Section 14.4 provided, the Vendee shall not, by exercising the right to cure any such Event of Default, impair the prior right and security title of the Manufacturer in and to the Collateral. Upon such payment by the Vendee of the amount of principal and interest then due and payable on the Conditional Sale Indebtedness, the Vendee shall be subrogated to the rights of the Manufacturer in respect of the Fixed Rental which was overdue at the time of such payment and interest payable by the Lessee on account of its being overdue, and therefore, if no other Event of Default shall have occurred and be continuing and if all principal and interest payments due on the Conditional Sale Indebtedness have been paid at the time of receipt by the Vendee of such Fixed Rental, the Vendee shall be entitled to received such Fixed Rental and such interest upon receipt thereof by the Manufacturer; provided that (i) in the event the principal and interest on the Conditional Sale Indebtedness shall have become due and payable pursuant to Section 14.1 hereof, such subrogation shall until principal of and interest on all Conditional Sale Indebtedness shall have been paid in full, be subordinate to the rights of the Manufacturer in respect of such payment of Fixed Rental and such interest on such overdue Fixed Rental prior to receipt by the Vendee of any amount pursuant to such subrogation, and (ii) the Vendee shall not be entitled to seek to recover any such payment (or any payment in lieu thereof) except pursuant to the foregoing right of subrogation.

14.5. If the Manufacturer has declared the Conditional Sale Indebtedness to be immediately due and payable pursuant to Section 14.1 hereof or an Event of Default has occurred, whether or not such declaration is made, and subsequent to such declaration or Event of Default, as the case may be, all arrears of (i) principal and interest on the Conditional Sale Indebtedness (including, to the extent permitted by law, interest at the rate specified in this Agreement on overdue interest), (ii) all expenses of the

Manufacturer, its agents and attorneys, and (iii) any other amounts which may be due and owing as provided herein, have been paid in full by the Vendee, and all events of default herein (other than payment of principal and accrued interest accelerated by a declaration pursuant to Section 14.1 above) shall have been made good or cured to the full satisfaction of the Investors, then, and in every such case, the Investors holding not less than 66-2/3% of the Conditional Sale Indebtedness then outstanding may, in their sole and absolute discretion, waive any such Event of Default and its consequences and rescind any such declaration. Thereupon, the Vendee and the Manufacturer shall be restored in full to their former respective positions and rights hereunder; but no such waiver shall in any way extend to or affect any subsequent default or impair or exhaust any right or power consequent thereon.

#### SECTION 15. REMEDIES.

15.1. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Manufacturer may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Manufacturer, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any Item thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 17 expressly provided, and may remove the same from possession and use of the Vendee and for such purpose may enter upon the premises of the Vendee or where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Lessee, with or without process of law.

15.2. In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Lessee for the delivery of the Equipment to the Manufacturer, the Vendee shall use its best efforts to cause the Lessee at its own expense, forthwith and in the usual manner, to cause the Equipment to be moved to such point or points as shall be reasonably designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer, subject to the rights, if any, of the Lessee to the use and possession of the Equipment under the Lease; and, at the option of the Manufacturer, to permit the Manufacturer to keep the Equipment on any of the railroad lines or premises of the Lessee until the Manufacturer shall have leased, sold or otherwise disposed of the same. The

agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any Item of Equipment in any reasonable manner.

15.3. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided, the Manufacturer with or without retaking possession thereof may at its election, sell the Equipment, or any Item thereof, free from any and all claims of the Vendee, or of any other party claiming by, through or under the Vendee (but subject to the then existing rights of the Lessee under the Lease, if any), at law or in equity, at public or private sale and with or without advertisement as the Manufacturer may determine and as is commercially reasonable; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Equipment, shall be credited to the amount due to the Manufacturer under the provisions of this Agreement.

15.4. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Manufacturer may determine, provided that the Vendee shall be given written notice of such sale not less than ten business days prior thereto, by mail addressed as provided herein and provided further that such sale shall be conducted in a commercially reasonable manner. If such sale shall be a private sale, it shall be subject to the rights of the Vendee to purchase or provide a purchaser, within ten business days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Manufacturer may bid for and become the purchaser of the Equipment, or any Item thereof, so offered for sale without accountability to the Vendee (except to the extent of surplus money received as hereinafter provided in this Section), and in payment of the Purchase Price therefor the Manufacturer shall be entitled to have credited on account thereof all sums due to the Manufacturer from the Vendee hereunder.

15.5. Each and every power and remedy hereby specifically given to the Manufacturer shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the



right to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

15.6. All sums of money realized by the Manufacturer under the remedies herein provided shall be applied, first to the payment of the expenses and liabilities of the Manufacturer herein undertaken to be paid, second to the payment of interest on the indebtedness in respect of the Purchase Price of the Equipment and third to the payment, ratably in accordance with the unpaid balance of each installment, of the installments of indebtedness in respect of the Purchase Price of the Equipment accrued and unpaid. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Vendee.

15.7. Subject to Section 25 hereof, the Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

15.8. The foregoing provisions of this Section are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

#### SECTION 16. APPLICABLE STATE LAWS.

16.1. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale agreement and enforced as such.

16.2. Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any Item thereof, and any other requirements as to the time, place and terms of sale thereof, and other requirements with respect to the enforcement of the Manufacturers' rights hereunder and any and all rights of redemption.

SECTION 17. EXTENSION NOT A WAIVER.

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturers shall impair or affect the Manufacturers' right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Manufacturers' rights or the obligations of the Vendee hereunder. The Manufacturers' acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Manufacturers' rights hereunder with respect to any subsequent payments or defaults therein.

SECTION 18. RECORDING.

The Vendee will cause this Agreement, the first assignment hereof and any supplements hereto and thereto (or a financing or continuation statement or similar notice thereof if and to the extent permitted or required by applicable law) to be filed, recorded or deposited and re-filed, re-recorded or re-deposited, if necessary, in all public offices as may be required by law or or reasonably requested by the Manufacturers for the purpose of proper protection, to the satisfaction of counsel for the Manufacturer and the Assignee of the security title to the Equipment and the rights of the Manufacturer under this Agreement and of the Assignee under the Assignment or for the purpose of carrying out the intention of this Agreement and the Assignment; and the Vendee will promptly furnish to the Manufacturer certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Vendee with respect thereto, satisfactory to the Manufacturer.

SECTION 19. NOTICE.

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to the Vendee: First Maryland Leasecorp  
25 South Charles Street  
Baltimore, Maryland 21203  
Attention: Michael T. Pyles

(b) to the Manufacturers: ACF Industries, Inc.  
750 Third Avenue  
New York, New York 10017  
Attention: Secretary

Ortner Freight Car Company  
2652 Erie Avenue  
Cincinnati, Ohio 45208  
Attention: Vice President

(c) to the Agent:

First Security Bank of Utah,  
N.A.  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: Corporate Trust  
Department

or to any other assignee of the Manufacturers, or of the Vendee, at such address as may have been furnished in writing to the Vendee or the Manufacturers, as the case may be, by such assignee, or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

#### SECTION 20. HEADINGS.

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

#### SECTION 21. EFFECT AND MODIFICATION OF AGREEMENTS.

Except as provided in Section 3.1 hereof, this Agreement and the Schedules relating hereto together with the Operative Agreements as defined in the Participation Agreement, exclusively and completely state the rights and agreements of the Manufacturers and the Vendee with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Manufacturers and the Vendee.

#### SECTION 22. LAW GOVERNING.

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Maryland; provided, however, that the parties shall be entitled to all rights conferred by 49 USC Section 11303 of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

#### SECTION 23. DEFINITIONS.

The term "Manufacturers", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, ACF Industries, Inc. and Ortner Freight Car Company and any successor or successors for the time being to the properties and business of each, respectively, and, after any such assignment, any assignee or assignees for the time being of such particular assigned rights

as regards such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any assignment. The rights and undertakings of each Manufacturer and the rights and obligations of the Vendee with respect to each Manufacturer hereunder are several and not joint.

SECTION 24. ASSIGNMENT OVER AND GRANT OF SECURITY INTEREST IN THE LEASE.

24.1. In order to further secure the payment of the Conditional Sale Indebtedness, the interest thereon and the payment or performance of all of the Vendee's obligations contained in this Agreement, the Vendee hereby assigns, transfers and sets over to the Manufacturer and grants the Manufacturer a security interest in all right, title, interest, claims and demands of the Vendee as lessor in, under and to the Lease, including all extensions of the term of the Lease, together with all rights, powers, privileges, options and other benefits of the Vendee as lessor under the Lease, including, without limitation, but subject to the exceptions, reservations and limitations contained in Section 24.6 below:

(a) the immediate and continuing right to receive and collect all rentals, insurance proceeds, condemnation awards and other payments, tenders and security now or hereafter payable to or receivable by the Vendee under the Lease pursuant thereto;

(b) following the occurrence of an Event of Default hereunder, the right to make all waivers and agreements with respect to the Lease and prior to the occurrence of such Event of Default, the right to concur with the Vendee in any such waivers or agreements; and

(c) the right to take such action upon the occurrence of a default or an Event of Default under the Lease, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by Section 14 of the Lease or by law, and to do any and all other things whatsoever which the Vendee or any lessor is or may be entitled to do under the Lease;

it being the intent and purpose hereof that the assignment and transfer to the Manufacturer of said rights, powers, privileges, options and other benefits shall be effective and operative immediately and shall continue in full force and effect, and the Manufacturer shall have the right to collect and receive said rentals and other sums for application to the payment of the Conditional Sale Indebtedness, together with the interest thereon and the other obligations of the Vendee hereby secured at all times during the period from and after the date of this Agreement until the Conditional Sale Indebtedness, together with the interest thereon and all other obligations of the Vendee hereby secured have been fully paid and discharged.

24.2. Subject to Section 24.6 hereof, the Vendee agrees that it will not:

(a) declare a default or exercise the remedies of the lessor under, or terminate, modify or accept a surrender of, or offer or agree to any termination, modification, surrender or termination of, the Lease in respect of the Equipment (except as otherwise expressly provided herein) or by affirmative act consent to the creation or existence of any security interest or other lien to secure the payment of indebtedness upon the leasehold estate created by the Lease or any part thereof, unless it shall have received the written consent of the holders of not less than 66-2/3% of the aggregate principal amount of the Certificates of Interest then outstanding; and

(b) receive or collect or permit the receipt or collection of any rentals or Casualty Value payments prior to the date for the payment thereof provided for by the Lease (unless received without fault and promptly remitted to the Manufacturer) or assign, transfer or hypothecate (other than to the Manufacturer hereunder) any rentals or Casualty Value payments then due or to accrue in the future under the Lease.

24.3. The Vendee does hereby irrevocably constitute and appoint the Manufacturer its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rentals and other payments (except as set forth in Section 24.6 hereof) and sums which are assigned under Section 24.1 hereof and, following the occurrence of an Event of Default hereunder, full power to settle, adjust or compromise any claim thereunder as fully as the Vendee could itself do, and to endorse the name of the Vendee on all commercial paper given in payment or in part payment there, and in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of the Vendee or otherwise, which the Manufacturer may deem necessary or appropriate to protect and preserve the right, title and interest of the Manufacturer in and to such rentals and other payments and sums and the security intended to be afforded hereby.

24.4. This assignment being made only as security shall not subject the Manufacturer to, or transfer, or pass, or in any way affect or modify, the liability of the Vendee under the Lease, it being understood and agreed that notwithstanding this assignment, or any subsequent assignment, all obligations of the Vendee to the Lessee, shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Vendee. Further, the Vendee covenants and agrees that it will perform all its obligations to be performed under the terms of the Lease, and hereby irrevocably authorizes and empowers the Manufacturer, in its own name, or in the name of its nominee, or in the name of the Vendee, to perform or cause to be performed any such obligation.

24.5. Upon the full discharge and satisfaction of the full amount of the Conditional Sale Indebtedness, together with interest as herein provided and the performance of all of the Vendee's obligations herein contained, the assignment made hereby and all rights herein assigned to the Manufacturer shall cease and terminate, and the Lease shall revert to the Vendee.

24.6. There are expressly excepted and reserved from the assignment and security interest provided for in Section 23.1 above the following described properties, rights, interests and privileges:

(a) all payments of any indemnity under Section 6, 10.2 or 21 of the Lease which are payable to the Vendee for its own account;

(b) if an Event of Default under the Lease based on a breach of any covenant of the Lessee to pay any such indemnity or payment referred to under paragraph (a) of this Section 24.6 shall occur and be continuing, the right of the Vendee to declare that an Event of Default exists under the Lease and the right of the Vendee to exercise the remedies, but only those remedies, provided for in Section 14.2(a) of the Lease to enforce performance by the Lessee of any covenants of the Lessee to pay any such indemnity or payment directly to the Vendee or to recover damages for the breach thereof; and

(c) any insurance proceeds payable under insurance policies maintained by the Lessee pursuant to Section 11 of the Lease which by the terms of such policies or the terms of the Lease are payable directly to the Vendee for its own account.

## SECTION 25. LIMITATIONS OF LIABILITY.

25.1. It is expressly understood and agreed by and between the Vendee and the Manufacturer and their respective successors and assigns, anything in this Conditional Sale Agreement to the contrary notwithstanding, neither the Assignee nor any investor in the Conditional Sale Indebtedness nor the successors or assigns of any of said persons, shall have any claim, remedy or right to proceed against the Vendee in its individual corporate capacity or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of the Vendee for the payment of any deficiency or any other sum owing on account of the Conditional Sale Indebtedness or for the payment of any liability resulting from the breach of any representation, agreement or warranty of any nature whatsoever, from any source other than the Equipment and the security interest in the Lease granted pursuant to Section 24 hereof, including the sums due

and to become due under the Lease; and the Assignee by the execution of the Participation Agreement and the Investors in the Conditional Sale Indebtedness by acceptance thereof, waive and release any personal liability of the Vendee in its individual corporate capacity and any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of the Vendee for and on account of such indebtedness or such liability, and the Assignee and the Investors in the Conditional Sale Indebtedness agree to look solely to the Equipment and the security interest in the Lease granted pursuant to Section 24 hereof, including the sums due and to become due under the Lease for the payment of said indebtedness or the satisfaction of such liability; provided, however, nothing herein contained shall limit, restrict or impair the rights of the Investors in the Conditional Sale Indebtedness to accelerate the maturity of the Conditional Sale Indebtedness upon a default under this Conditional Sale Agreement; to bring suit and obtain a judgment against the Vendee on the Conditional Sale Indebtedness or to exercise all rights and remedies provided under this Conditional Sale Agreement or otherwise realize upon the Equipment and the security interest in the Lease granted pursuant to Section 24 hereof; provided, further, that nothing in this Section shall be construed to limit in scope or substance those representations and warranties of the Vendee in its individual capacity set forth in the Participation Agreement.

25.2. Without limiting the effect of Section 25.1 hereof, the obligations of the Vendee under Sections 2.4, 5, 6.1, 9.1, 10.1, 12.5, 15.2 and 15.7 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such undertakings, but if the same shall not be performed, they shall constitute the basis for an Event of Default hereunder pursuant to Section 14 hereof.

#### SECTION 26. EXECUTION.

This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by all of the parties hereto so long as at least one counterpart is signed by each party hereto. Although this Agreement is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers or representatives, thereunto duly authorized, and

their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

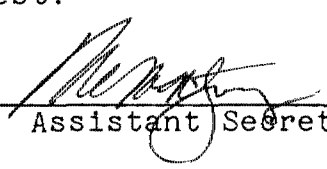
ACF INDUSTRIES, INC.

(Corporate Seal)

By

  
Vice President  
TREASURER

Attest:

  
Assistant Secretary

ORTNER FREIGHT CAR COMPANY

By

Vice President

Attest:

Assistant Secretary

FIRST MARYLAND LEASECORP

(Corporate Seal)

By

Its

Attest:

Assistant Secretary



STATE OF NEW YORK )  
 ) SS  
COUNTY OF NEW YORK )

On this 12<sup>th</sup> day of April, 1979, before me personally appeared H. A. BORST, to me personally known, who, being by me duly sworn, says that he is a ~~Vice~~ **TREASURER** ~~President~~ of ACF INDUSTRIES, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public

EDWIN F. MEYER  
NOTARY PUBLIC, State of New York  
No. 30-7917803  
Qualified in Nassau County  
Certificate filed in New York County  
Commission Expires March 30, 1980

(Seal)

My Commission Expires:

STATE OF OHIO )  
 ) SS  
COUNTY OF HAMILTON )

On this \_\_\_\_ day of \_\_\_\_\_, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a Vice President of ORTNER FREIGHT CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

(Seal)

My Commission Expires:

STATE OF MARYLAND        )  
                              )  SS  
COUNTY OF BALTIMORE    )

On this \_\_\_\_ day of \_\_\_\_\_, 1979, before  
me personally appeared \_\_\_\_\_, to me personally  
known, who, being by me duly sworn, says that he is a Vice  
President of FIRST MARYLAND LEASECORP, that one of the seals  
affixed to the foregoing instrument is the corporate seal of  
said corporation, that said instrument was signed and sealed  
on behalf of said corporation by authority of its Board of  
Directors, and he acknowledged that the execution of the foregoing  
instrument was the free act and deed of said corporation.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires:

SCHEDULE A

(to Conditional Sale Agreement)

MANUFACTURER ..... ACF Industries, Inc.

DESCRIPTION OF EQUIPMENT ..... 100 Covered Hopper Cars  
bearing Mark and Numbers  
MKT 400 to MKT 499,  
both inclusive

SPECIFICATIONS ..... ACF No. 78-OAO-115 of  
March 13, 1978

ESTIMATED PRICE ..... \$34,000

PLACE OF DELIVERY ..... Milton, Pennsylvania or such  
other place mutually acceptable  
to the Manufacturer, the Vendee  
and the Lessee

ESTIMATED DELIVERY DATES ..... December 1979 through January 1980

OUTSIDE DELIVERY DATE ..... March 31, 1980

SCHEDULE B

(to Conditional Sale Agreement)

MANUFACTURER .....	Ortner Freight Car Company
DESCRIPTION OF EQUIPMENT .....	100 Gondola Cars bearing Mark and Numbers MKT 12400 to MKT 12499, both inclusive
SPECIFICATIONS .....	OCN 1369-3-78, and amendments thereto
ESTIMATED PRICE .....	\$33,000
PLACE OF DELIVERY .....	Covington, Kentucky
ESTIMATED DELIVERY DATES .....	July - October, 1979
OUTSIDE DELIVERY DATE .....	December 31, 1979

SCHEDULE C

(to Conditional Sale Agreement)

AMORTIZATION SCHEDULE

(Payments Required Per \$1,000,000 Aggregate  
Amount of Conditional Sale Indebtedness)

<u>Payment No.</u>	<u>Portion Allocated to Interest</u>	<u>Portion Allocated to Principal</u>	<u>Total Payment</u>
1	26875.00	8222.03	35097.03
2	26654.03	8443.00	35097.03
3	26427.13	8669.90	35097.03
4	26194.12	8902.91	35097.03
5	25954.86	9142.17	35097.03
6	25709.16	9387.87	35097.03
7	25456.86	9640.17	35097.03
8	25197.79	9899.24	35097.03
9	24931.74	10165.29	35097.03
10	24658.55	10438.48	35097.03
11	24378.01	10719.02	35097.03
12	24089.94	11007.09	35097.03
13	23794.12	11302.91	35097.03
14	23490.36	11606.67	35097.03
15	23178.43	11918.60	35097.03
16	22858.12	12238.91	35097.03
17	22529.20	12567.83	35097.03
18	22191.44	12905.59	35097.03
19	21844.60	13252.43	35097.03
20	21488.44	13608.59	35097.03
21	21122.71	13974.32	35097.03
22	20747.15	14349.88	35097.03
23	20361.50	14735.53	35097.03
24	19965.48	15131.55	35097.03
25	19558.82	15538.21	35097.03
26	19141.23	15955.80	35097.03
27	18712.42	16384.61	35097.03
28	18272.08	16824.95	35097.03
29	17819.91	21908.48	39728.39
30	17231.12	22497.27	39728.39
31	16626.50	23101.89	39728.39
32	16005.64	23722.75	39728.39
33	15368.09	24360.30	39728.39
34	14713.41	25014.98	39728.39
35	14041.13	25687.26	39728.39
36	13350.79	26377.60	39728.39
37	12641.89	27086.50	39728.39

<u>Payment No.</u>	<u>Portion Allocated to Interest</u>	<u>Portion Allocated to Principal</u>	<u>Total Payment</u>
38	11913.94	27814.45	39728.39
39	11166.43	28561.96	39728.39
40	10398.83	29329.56	39728.39
41	9610.59	30117.81	39728.40
42	8801.18	30927.22	39728.40
43	7970.01	31758.38	39728.39
44	7116.51	32611.89	39728.40
45	6240.06	33488.33	39728.39
46	5340.07	34388.32	39728.39
47	4415.88	35312.51	39728.39
48	3466.86	36261.53	39728.39
49	2492.33	37236.06	39728.39
50	1491.61	38236.78	39728.39
51	463.99	17264.62	17728.61

Each Manufacturer for itself warrants that the Items of Equipment to be built by it will be built in accordance with the Specifications therefor and warrants that such Items of Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Lessee and not manufactured by the Manufacturer, in respect of which the Manufacturer hereby appoints and constitutes the Lessee, its agent and attorney in-fact to assert and enforce from time to time in the name of the Manufacturer but for the account of the Lessee as its interests may appear and in all cases at the sole cost and expense of the Lessee whatever claims and rights the Manufacturer may have against the manufacturer of the specialty) or workmanship under normal use and service, the Manufacturer's obligation under this Section being limited to making good at its plant any part or parts of any such Item of Equipment which shall within one year after the delivery of such Item of Equipment to the Lessee under the Lease, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective; provided, however, that this warranty shall not apply to (i) any components which shall have been repaired or altered unless repaired or altered by the Manufacturer or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of any such Item of Equipment, or (ii) any Item of Equipment which has been subject to misuse, negligence or accident. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE MANUFACTURER, EXCEPT FOR ITS OBLIGATIONS HEREUNDER AS LIMITED HEREBY, AND THE MANUFACTURER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT EXCEPT AS AFORESAID AND EXCEPT FOR PATENT INDEMNITIES CONTAINED IN SECTION 11 HEREOF. IN NO EVENT SHALL THE MANUFACTURER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR COMMERCIAL LOSS. The Manufacturer reserves the right to make changes in the design of, or add any improvements to, any Items of Equipment to be built by it at any time with the approval of the Vendee and the Lessee. The Manufacturer further agrees with the Vendee and the Lessee that acceptance of any Items of Equipment under Section 2.4 of the Conditional Sale Agreement shall not be deemed a waiver by the Vendee and the Lessee of any of their respective rights under the provisions of this paragraph.

It is hereby agreed that the Lessee shall be and it is hereby constituted a third party beneficiary to each of the covenants and agreements of the Manufacturer expressed above.

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CONDITIONAL SALE AGREEMENT

Dated as of December 20, 1978

Among

ACF INDUSTRIES, INC.

and

ORTNER FREIGHT CAR COMPANY

Manufacturers

and

FIRST MARYLAND LEASECORP

Vendee

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(KATY No. 79-1)  
(100 Covered Hopper & 100 Gondola Cars)



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### ATTACHMENTS TO CONDITIONAL SALE AGREEMENT:

Schedules A and B -- Descriptions of Equipment  
Schedule C -- Amortization Schedule

## CONDITIONAL SALE AGREEMENT

This CONDITIONAL SALE AGREEMENT dated as of December 20, 1978 among ACF INDUSTRIES, INC. and ORTNER FREIGHT CAR COMPANY (said parties being hereinafter sometimes collectively referred to as the "Manufacturers" and individually as a "Manufacturer") and FIRST MARYLAND LEASECORP (the "Vendee");

### R E C I T A L S:

Each Manufacturer is willing to construct, sell and deliver to the Vendee, and the Vendee is willing to purchase, the railroad equipment to be built by such Manufacturer as described in Schedules A and B attached hereto (collectively the "Equipment" or "Items" and individually "Item of Equipment" or "Item").

The following terms shall have the following meanings unless the context shall otherwise require:

1. "Participation Agreement" shall mean the Participation Agreement dated as of December 20, 1978 among the Lessee, the Vendee, the Assignee and the parties named in Schedule 1 thereto (the "Investors").

2. "Assignment" shall mean the Agreement and Assignment dated as of December 20, 1978 between the Manufacturers and the Assignee.

3. "Assignee" shall mean First Security Bank of Utah, N.A., as agent and assignee under the Assignment, and its successors in interest thereunder.

4. "Lease" shall mean the Equipment Lease dated as of December 20, 1978 between the Vendee, as lessor, and the Lessee.

5. "Lessee" shall mean MISSOURI-KANSAS-TEXAS RAILROAD COMPANY.

In consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

### SECTION 1. CONSTRUCTION AND SALE.

Each of the Manufacturers will construct, sell and deliver to the Vendee, and the Vendee will purchase from such Manufacturer and accept delivery of and pay for as hereinafter provided, those Items of Equipment which are indicated on Schedules

A and B to be constructed and sold by such Manufacturer, each Item of which shall be constructed in accordance with the applicable specifications referred to in said Schedules A and B with such modifications thereof as may be agreed upon in writing by the Vendee and the Manufacturer thereof (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design and quality of equipment and material used in the manufacture of such Items shall conform to all Department of Transportation requirements and specifications for new equipment, and to all standards recommended by the Association of American Railroads, interpreted as being applicable to the new railroad equipment of the character of such Items as of the date of this Agreement.

## SECTION 2. DELIVERY.

2.1. Each Manufacturer will deliver the various Items of Equipment to be manufactured by it to the Vendee in accordance with the delivery schedule set forth in Schedules A and B attached hereto; provided, however, that the Manufacturers shall have no obligation to deliver any Item of Equipment hereunder if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute an Event of Default, has occurred and is continuing.

2.2. Each Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Manufacturer's reasonable control, including, but not limited to, act of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riots or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

2.3. Notwithstanding the foregoing provisions, in this Section 2, the Vendee shall not be obligated hereunder to accept and pay for any Equipment not delivered and accepted on or before the outside delivery date provided therefor in Schedule A or Schedule B as the case may be attached hereto. Any Equipment not so delivered and accepted pursuant to the first sentence of this Section 2.3 and any Equipment not so delivered and accepted pursuant to Sections 2.1 and 2.4 hereof shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Vendee and such Manufacturer shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not excluded herefrom, and such Manufacturer agrees to look solely to the obligations of the Lessee pursuant to Section 1.4 of the Lease in respect of such excluded Item of Equipment.

2.4. The Equipment during construction shall be subject to inspection by one or more inspectors or other authorized representatives of the Lessee and the Vendee. Upon completion of each Item of Equipment by the Manufacturer thereof, it shall

be presented to such inspectors or representatives for inspection at the place designated herein for delivery of such Item of Equipment. Acceptance of any Items of Equipment by the Lessee under Section 1.2 of the Lease shall be deemed to be acceptance of such by the Vendee hereunder, and the Lease will provide that the Lessee shall furnish the Certificate or Certificates of Acceptance, on behalf of the Lessee and on behalf of the Vendee, to the Manufacturer of an Item in such number of counterparts as may be reasonably requested.

2.5. The Manufacturer of each Item of Equipment shall bear the risk of loss of each Item of Equipment or damage thereto until delivery to and acceptance by the Lessee pursuant to the Lease. Upon delivery and acceptance by the Lessee of each such Item of Equipment the Vendee shall bear the risk of loss of or damage to such Item as between the Vendee and the Manufacturer thereof.

### SECTION 3. PURCHASE PRICE AND PAYMENT.

3.1. The estimated price per Item of Equipment, including freight charges, if any, to place of delivery, but exclusive of interest and all other charges, is as set forth in Schedules A and B attached hereto. The estimated price per Item of Equipment shall be subject to increase or decrease as provided by the prior contractual arrangements with the Manufacturer (the "Purchase Agreements") or as may otherwise be agreed to by the Manufacturer thereof, the Lessee and the Vendee, and the term "Purchase Price" as used herein shall mean the estimated price as so increased or decreased; provided that the Purchase Price for any Item of Equipment manufactured by Ortner Freight Car Company shall not exceed \$34,500, the Purchase Price for any Item of Equipment manufactured by ACF Industries Inc. shall not exceed \$35,200 and the Purchase Price for all Equipment shall not exceed the sum of \$6,970,000. If the Purchase Price of any Item of Equipment then ready to be delivered by a Manufacturer hereunder and under the Lease would, upon such delivery, cause the aggregate Purchase Price for all Items of Equipment theretofore delivered hereunder, when taken together with the Purchase Price of such additional Item of Equipment, to exceed the sum of \$6,970,000 for all Items of Equipment, then each Manufacturer agrees that it will withhold delivery of such Item of Equipment and all other Items of Equipment then remaining undelivered hereunder and under the Lease and the Vendee and the Manufacturers agree that such Item or Items of Equipment will be excluded from this Agreement and the Manufacturer agrees to look solely to the obligation of the Lessee pursuant to Section 1.4 of the Lease in respect of such excluded Equipment.

3.2. For the purpose of making settlement for the Equipment, the Equipment shall be divided into not more than five groups of Items of Equipment, or such other number as shall be agreed to by the parties hereto (each such group of Items being hereinafter called a "Group").

3.3. The Vendee hereby acknowledges itself to be indebted to the respective Manufacturers in the amount of, and hereby promises to pay to the respective Manufacturers at such bank or trust company in the United States as each of the Manufacturers or its assignee shall designate for payment to it in funds payable by check drawn on a bank within the Continental United States, the Purchase Price of the Items of Equipment in each Group, as follows:

(a) On the Closing Date for the Group for which settlement is then being made, an amount equal to 33.2593% of the Purchase Price of the Items of Equipment in such Group; and

(b) An amount equal to the difference between the entire Purchase Price of the Items of Equipment in such Group and the amount paid pursuant to subparagraph (a) above (such amount sometimes hereinafter referred to as the "Conditional Sale Indebtedness") plus interest on the unpaid balance thereof payable in installments as follows:

(1) One installment of interest only at the rate of 10-3/4% per annum for the period from and including the Closing Date as defined in the to Participation Agreement to but not including the Term Lease Commencement Date (as defined in the Lease), payable on the Term Lease Commencement Date, followed by

(2) Fifty (50) quarterly installments, each including both principal and interest at the rate of 10-3/4% per annum, the first such installment payable three months following the installment of interest only referred to in clause (1) above and the remaining such installments to be payable at three-month intervals thereafter in amounts in accordance with the Amortization Schedule C attached thereto, followed by

(3) A final installment, due and payable three months following the final installment referred to in clause (2) above, in an amount equal to the entire principal of and interest remaining unpaid on the Conditional Sale Indebtedness on said date.

3.4. The term "Closing Date" with respect to each Group shall mean such date not later than March 31, 1980 which is not more than ten business days following presentation by the Manufacturer or Manufacturers, as the case may be, of the Items of Equipment included in such Group to the Lessee of those items required to be delivered by the Manufacturer pursuant to the Participation Agreement as shall be fixed by the Lessee by written or telegraphic notice

delivered to such Manufacturer or Manufacturers and any assignee and Vendee thereof at least five business days prior to the Closing Date designated therein. Prior to the first Closing Date, the Vendee shall furnish to the Manufacturer a Kentucky Sales Tax Exemption Certificate in form and substance satisfactory to the Manufacturer's counsel, certifying that all Equipment being purchased pursuant to this Agreement is exempt from the application of the Kentucky sales tax.

3.5. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of Utah, Maryland or Texas are authorized or required to close. If any date on which a payment is to be made hereunder is not a business day, the amount otherwise payable on such date shall be payable on the next succeeding business day, and no interest on such amount shall accrue for the period from and after the nominal date for payment thereof to such next succeeding business day.

3.6. Interest under this Agreement shall be determined on a basis of a 360-day year of twelve 30-day months except that interest on the interim installment provided for in Section 3.3 (b)(1) hereof shall be determined on an actual day basis of a 365 day year.

3.7. The Vendee will pay interest at the rate of 11-3/4% per annum upon all unpaid balances of indebtedness and (to the extent legally enforceable) upon interest, after the same shall have become due and payable pursuant to the terms hereof.

3.8. All payments provided for in this Agreement shall be made by the Vendee in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

3.9. Except as provided in Section 6 and Section 14.3, the Vendee shall not have the privilege of prepaying any installment of the indebtedness prior to the date it becomes due hereunder.

#### SECTION 4. TITLE TO THE EQUIPMENT.

4.1. Title to the Equipment shall pass to the Vendee subject to retention of security title by each Manufacturer in the Equipment built by it until the Vendee shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee as herein provided. Any and all additions to the Equipment which become the property of the Vendee pursuant to the Lease

and any and all additions to the Equipment and replacements of parts thereof shall constitute accessions to the Equipment and shall be subject to all terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

4.2. When and only when each Manufacturer shall have been paid in full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided and all the Vendee's other obligations herein contained shall have been performed, absolute right to the possession of, absolute title to and property in the Equipment shall pass to and vest in the Vendee or its successors or assigns without further transfer or action on the part of such Manufacturer except that each Manufacturer, if requested by the Vendee so to do, will execute a bill or bills of sale of the Equipment releasing its security title thereto and property therein to the Vendee or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address specified in Section 19 hereof, and will execute in the same manner and deliver at the same place, for filing, registering, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment, and will pay to the Vendee any money paid to such Manufacturer, pursuant to Section 6 hereof and not therefore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand by the Vendee.

#### SECTION 5. MARKING OF EQUIPMENT.

The Vendee will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedules A and B hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon both sides of each Item of Equipment in letters not less than one inch in height, the words "Unit Subject to Security Interest of Agent Bank under Conditional Sale Agreement Recorded with the I.C.C.", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security title of the Manufacturer thereof to such Item of Equipment, its rights under this Agreement and the rights of any assignee under Section 14 hereof.

## SECTION 6. CASUALTY OCCURRENCES.

6.1. In the event that any Item of Equipment shall be or become lost, stolen, destroyed or, in the reasonable opinion of the Lessee pursuant to Section 11.2 of the Lease, irreparably damaged or permanently rendered unfit for use from any cause whatsoever during the term of this Agreement, or title or use thereof shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise during the term of this Agreement for a stated period which exceeds the then remaining term of the Lease (any such occurrence being hereinafter referred to as a "Casualty Occurrence"), the Vendee shall promptly and fully (after it has actual knowledge of such Casualty Occurrence), inform the Manufacturer thereof in regard thereto. When any Item of Equipment suffers a Casualty Occurrence the Vendee, on the next following due date for Conditional Sale Indebtedness following its determination that a Casualty Occurrence has taken place with respect to any Item of Equipment shall pay to the Manufacturer thereof the Casualty Payment (as defined in Section 6.4 hereof) of such Item as of the date of such payment. Each such payment shall be accompanied by notification from the Vendee identifying the amount thereof and stating that said payment constitutes a Casualty Payment.

6.2. Such Manufacturer shall, immediately upon receipt thereof, apply the money deposited pursuant to Section 6.1 to the prepayment of that portion of the Conditional Sale Indebtedness in respect of the Purchase Price of any Items of Equipment having suffered a Casualty Occurrence, plus interest then accrued on the portion thereof so prepaid, but without premium. The quarterly payments of principal of and interest on the Conditional Sale Indebtedness relating to the remaining Equipment and interest thereon becoming due thereafter shall be redetermined on the basis of the amount of such Conditional Sale Indebtedness remaining unpaid and on the basis of the number of quarterly payments remaining immediately after such application. Promptly following such redetermination, the Vendee will furnish to the Assignee and the Lessee a revised schedule of payments of principal and interest thereafter to be made hereunder in such number of counterparts as any such party may reasonably request.

6.3. Upon payment to such Manufacturer of the Casualty Payment in respect of an Item of Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such Item shall automatically pass to and vest in the Vendee without further transfer or action on the part of the Manufacturer thereof. Such Manufacturer, if requested by the Vendee, will execute and deliver to the Vendee, at its address specified in Section 18 hereof, at the reasonable expense of the Vendee, appropriate instruments confirming such release to the Vendee of security title to and property in such Item, free of all liens and encumbrances created or retained hereby, in



recordable form in order that the Vendee may make clear upon the public records the title of the Vendee to such Item.

6.4. The Casualty Payment in respect of each Item of Equipment having suffered a Casualty Occurrence shall be deemed to be that portion of the Conditional Sale Indebtedness related to such Item remaining unpaid on the date as of which such Casualty Payment shall be determined, plus interest accrued thereon but unpaid as of such date.

6.5. In the event that during the term of the Lease the use of or title to any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise, for an indefinite period or for a stated period which does not exceed the term of the Lease, then the Vendee's duty to pay the indebtedness in respect of the Purchase Price thereof shall continue for the duration of such requisitioning or taking. The Vendee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

#### SECTION 7. REPORTS AND INSPECTIONS.

Each Manufacturer shall have the right, by its agents, to inspect the Items of Equipment built by it whenever available for such inspection and to further inspect the records of the Vendee with respect thereto once in every year at reasonable times.

#### SECTION 8. POSSESSION AND USE.

8.1. The Vendee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturers to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

8.2. The Vendee may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in Section 17 of the Lease, and it is hereby acknowledged and agreed that the rights of the Manufacturers under this Agreement are subject to the rights and interest of the Lessee under the Lease. A copy of any assignment made by the Lessee pursuant to Section 17 of the Lease of any consent thereunder shall be furnished to the Manufacturer; provided that each Manufacturer hereby acknowledges receipt of an executed copy of the Lease. The Lease shall not be amended or terminated without the prior written consent of each Manufacturer, which consent shall not be unreasonably withheld.

#### SECTION 9. PROHIBITION AGAINST LIENS.

9.1. The Vendee will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Vendee or its

successors or assigns (other than the Lessee or their respective assigns) which, if unpaid, might become a lien or a charge upon any Item of Equipment equal or superior to the security title of the Manufacturer, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

9.2. This covenant will not in any event be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

#### SECTION 10. INDEMNITIES.

10.1. The Vendee shall cause the Lessee to assume all risk and expense arising from the possession, use, operation and maintenance of the Equipment.

10.2. Except to the extent provided in Section 2.5 hereof, the Vendee will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Item or of all the Equipment.

10.3. The warranties of each Manufacturer with respect to defects in material or workmanship of the Items of Equipment to be built by such Manufacturer are set forth in Annex A hereto.

#### SECTION 11. PATENT INDEMNITIES.

11.1. Except in cases of designs specified by the Lessee and not developed or purported to be developed by a Manufacturer, and articles and materials specified by the Lessee and not manufactured by such Manufacturer, such Manufacturer agrees to indemnify, protect and hold harmless the Vendee and the Lessee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee because of the use, in or about the construction or operation of any Item of Equipment to be built by such Manufacturer, of any design, article or material which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. In case any Item of Equipment is held to constitute infringement of any patent or any similar right in respect of which liability may be charged against a Manufacturer, and the use of any Item of Equipment to be built by such Manufacturer is enjoined, such Manufacturer shall, at its own expense and at its option, either procure for the Vendee and the Lessee the

right to continue using such Item of Equipment or replace the same with noninfringing equipment or modify it so that it becomes noninfringing. Without intending any limitation of the foregoing, each Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right and cause of action hereinafter referred to, transfer, assign, set over and deliver to the Vendee every claim, right and cause of action which such Manufacturer has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by such Manufacturer for use in or about the construction or operation of the Items of Equipment to be built by such Manufacturer on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right and each Manufacturer further agrees to execute and deliver to the Vendee all and every such further assurance as may be reasonably requested by the Vendee, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. Each Manufacturer will give notice to the Vendee of any claim known to such Manufacturer from which liability may be charged against the Vendee hereunder and the Vendee will give notice to each Manufacturer of any claim known to it from which liability may be charged against such Manufacturer hereunder.

11.2. The term "design" wherever used in this Agreement or in any assignment of this Agreement shall be deemed to include formulae, systems, processes and combinations.

11.3. The obligations and liabilities of the Manufacturer under this Section shall apply only to Equipment located and used in the continental United States, Canada and Mexico.

11.4. It is hereby agreed that the Lessee shall be and it is hereby constituted a third party beneficiary to each of the covenants and agreements of the Manufacturers expressed in this Section 11.

## SECTION 12. ASSIGNMENTS.

12.1. The Vendee will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in the Lease and the Participation Agreement, transfer the right to possession of any Item of Equipment without first obtaining the written consent of the Manufacturers, which consent shall not be unreasonably withheld. No such sale, assignment or transfer shall subject the Manufacturers to any duty, obligation or liability whatsoever.

12.2. All or any of the rights, benefits and advantages of the Manufacturers under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned

by the Manufacturers and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturers from, any of the obligations of the Manufacturers to construct and deliver the Equipment in accordance with Sections 1 and 2.1 hereof, or to respond to its warranties and indemnities contained in Sections 11.3 and 12 hereof, or relieve the Vendee of its obligations to the Manufacturers hereunder.

12.3. Upon any such assignment either the assignor or the assignee shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Manufacturers' right security title and interest in and to the Equipment subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee, of the notification of any such assignment, all payments thereafter to be made by the Vendee hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

12.4. The Vendee recognizes that it is the custom of equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or some or all of the rights of the Manufacturers hereunder, is contemplated. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Manufacturers hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Manufacturers as hereinbefore provided the rights of such assignee to the entire unpaid Conditional Sale Indebtedness or such part thereof as may be assigned, together with the interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of any Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by any Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against such Manufacturer.

12.5. In the event of any such assignment or successive assignments by the Manufacturers of security title to the Equipment and of the rights thereof hereunder with respect thereto, the Vendee will, whenever requested by such assignee, change the names and word or words to be marked on each side of each Item of Equipment or, in the event such Item shall then be leased to the Lessee, the Vendee will use its best efforts to cause the Lessee pursuant to Section 4 of the Lease to change the names and word or words to be marked on each side of such Item, so as to indicate the security title of such assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the

laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such names and word or words with respect to the first assignee of this Agreement (or to a successor agent or trustee in case the first assignee is an agent or trustee) and with respect to the Vendee shall be borne by the Manufacturer. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent or trustee if the first assignee is an agent or trustee) will be borne by the subsequent assignee.

12.6. In the event of any such assignment prior to the completion of delivery of the Equipment, the Vendee will, in connection with settlement for any Group of Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date with respect to such Group, all documents reasonably required by the terms of such assignment to be delivered by the Vendee to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested.

12.7. Nothing in this Section 12 shall be deemed to restrict the right of the Vendee to assign or transfer its interest under this Agreement in the Equipment to any corporation into or with which the Vendee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the property of the Vendee, provided that such assignee, successor or transferee shall have duly assumed the obligations of the Vendee hereunder and that it will not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Agreement and that such merger or consolidation or acquisition of properties shall not alter in any way the Vendee's obligations hereunder which shall be and remain those of a principal and not a guarantor.

SECTION 13. APPLICATION OF PROVISIONS OF SECTION 14, "DEFAULTS", AND SECTION 15, "REMEDIES".

It is contemplated that each Manufacturer will, coincidentally with the execution and delivery of this Agreement, assign certain of its rights under this Agreement, and all its respective right, security title and interest in and to the Equipment to the Agent. It is desired by the parties hereto that the Agent should upon such assignment be entitled to enforce any remedies in case of default by the Vendee in respect of its obligations under this Agreement with any of the Manufacturers as if such breach were a default in respect of the Vendee's obligations under this Agreement with each of the Manufacturers. Accordingly, on the assumption that such assignments to the Agent will be made by each Manufacturer, the defaults and the remedies therefor as set forth in Sections 14 and 15 hereof are set forth as if there were a single Manufacturer.

SECTION 14. DEFAULTS.

14.1. In the event that any one or more of the following events of default ("Events of Default") shall occur and be continuing, to-wit:

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due under Section 3 or 6 hereof and such default shall continue for ten days; or

(b) The Vendee shall fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Manufacturer for such compliance for more than 30 days after written notice from the Manufacturer specifying the default and demanding the same to be remedied; or

(c) Any representation or warranty made by the Vendee herein or in any statement or certificate furnished to the Manufacturer or any assignee of the Agreement, the Agreement and Assignment, the Lease or the Participation Agreement proves untrue in any material respect as of the date of issuance or making thereof; or

(d) An Event of Default (as defined in the Lease) shall have occurred and be continuing under the Lease; or

(e) The Vendee becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they may mature, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for the Lessee or for the major part of its property; or

(f) A trustee or receiver is appointed for the Vendee or for the major part of its property and is not discharged within sixty (60) days after such appointment; or

(g) Any other proceedings shall be commenced by or against the Vendee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and (unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Vendee under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by

trustee or trustees or receiver or receivers appointed for the Vendee or for the property of the Vendee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(h) The Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Item of Equipment;

then at any time after the occurrence and during the continuance of such an Event of Default the Manufacturer may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 11-3/4% per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled subject to the provisions of Section 25 of this Agreement to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of the Vendee's interest in the Equipment.

14.2. The Manufacturer may waive any such Event of Default and its consequences and rescind and annul any such declaration by notice to the Vendee in writing to that effect. Upon any such waiver the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

14.3. Any default under Section 14.1(d) hereunder shall be deemed cured and not continuing if the Vendee, prior to any sale by the Manufacturer of the Equipment as provided in Section 15.3, shall pay or cause to be paid to the Manufacturer the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement.

14.4. Except as hereinafter provided, if an Event of Default under the Lease of which the Manufacturer has knowledge shall have occurred and be continuing the Manufacturer shall give the Vendee not less than 10 days' prior written notice of the date (the "Enforcement Date") on which the Manufacturer will exercise any remedy or remedies pursuant to Sections 14.1 and 15 hereof.

In the event of the occurrence of an Event of Default in respect of the payment of Fixed Rental under the Lease (as defined therein) on the day it becomes due and payable (unless there shall have occurred and be continuing any Event of Default under the Lease other than a failure to pay Fixed Rental), the Vendee may, prior to the Enforcement Date, pay to the Manufacturer an amount equal to any principal and interest (including interest, if any, on overdue payments of principal and interest) then due and payable on the Conditional Sale Indebtedness, and such payment by the Vendee shall be deemed to cure any Event of Default under this Agreement which would otherwise have arisen on account of the non-payment by the Lessee of such installment of Fixed Rental under the Lease; provided, however, that the Vendee may not exercise such right in respect of more than two consecutive Fixed Rental payment defaults or in any event more than a total of four times throughout the term of the Lease.

Except as hereinafter in this Section 14.4 provided, the Vendee shall not, by exercising the right to cure any such Event of Default, impair the prior right and security title of the Manufacturer in and to the Collateral. Upon such payment by the Vendee of the amount of principal and interest then due and payable on the Conditional Sale Indebtedness, the Vendee shall be subrogated to the rights of the Manufacturer in respect of the Fixed Rental which was overdue at the time of such payment and interest payable by the Lessee on account of its being overdue, and therefore, if no other Event of Default shall have occurred and be continuing and if all principal and interest payments due on the Conditional Sale Indebtedness have been paid at the time of receipt by the Vendee of such Fixed Rental, the Vendee shall be entitled to received such Fixed Rental and such interest upon receipt thereof by the Manufacturer; provided that (i) in the event the principal and interest on the Conditional Sale Indebtedness shall have become due and payable pursuant to Section 14.1 hereof, such subrogation shall until principal of and interest on all Conditional Sale Indebtedness shall have been paid in full, be subordinate to the rights of the Manufacturer in respect of such payment of Fixed Rental and such interest on such overdue Fixed Rental prior to receipt by the Vendee of any amount pursuant to such subrogation, and (ii) the Vendee shall not be entitled to seek to recover any such payment (or any payment in lieu thereof) except pursuant to the foregoing right of subrogation.

14.5. If the Manufacturer has declared the Conditional Sale Indebtedness to be immediately due and payable pursuant to Section 14.1 hereof or an Event of Default has occurred, whether or not such declaration is made, and subsequent to such declaration or Event of Default, as the case may be, all arrears of (i) principal and interest on the Conditional Sale Indebtedness (including, to the extent permitted by law, interest at the rate specified in this Agreement on overdue interest), (ii) all expenses of the



Manufacturer, its agents and attorneys, and (iii) any other amounts which may be due and owing as provided herein, have been paid in full by the Vendee, and all events of default herein (other than payment of principal and accrued interest accelerated by a declaration pursuant to Section 14.1 above) shall have been made good or cured to the full satisfaction of the Investors, then, and in every such case, the Investors holding not less than 66-2/3% of the Conditional Sale Indebtedness then outstanding may, in their sole and absolute discretion, waive any such Event of Default and its consequences and rescind any such declaration. Thereupon, the Vendee and the Manufacturer shall be restored in full to their former respective positions and rights hereunder; but no such waiver shall in any way extend to or affect any subsequent default or impair or exhaust any right or power consequent thereon.

#### SECTION 15. REMEDIES.

15.1. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Manufacturer may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Manufacturer, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any Item thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 17 expressly provided, and may remove the same from possession and use of the Vendee and for such purpose may enter upon the premises of the Vendee or where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Lessee, with or without process of law.

15.2. In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Lessee for the delivery of the Equipment to the Manufacturer, the Vendee shall use its best efforts to cause the Lessee at its own expense, forthwith and in the usual manner, to cause the Equipment to be moved to such point or points as shall be reasonably designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer, subject to the rights, if any, of the Lessee to the use and possession of the Equipment under the Lease; and, at the option of the Manufacturer, to permit the Manufacturer to keep the Equipment on any of the railroad lines or premises of the Lessee until the Manufacturer shall have leased, sold or otherwise disposed of the same. The

agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any Item of Equipment in any reasonable manner.

15.3. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided, the Manufacturer with or without retaking possession thereof may at its election, sell the Equipment, or any Item thereof, free from any and all claims of the Vendee, or of any other party claiming by, through or under the Vendee (but subject to the then existing rights of the Lessee under the Lease, if any), at law or in equity, at public or private sale and with or without advertisement as the Manufacturer may determine and as is commercially reasonable; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Equipment, shall be credited to the amount due to the Manufacturer under the provisions of this Agreement.

15.4. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Manufacturer may determine, provided that the Vendee shall be given written notice of such sale not less than ten business days prior thereto, by mail addressed as provided herein and provided further that such sale shall be conducted in a commercially reasonable manner. If such sale shall be a private sale, it shall be subject to the rights of the Vendee to purchase or provide a purchaser, within ten business days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Manufacturer may bid for and become the purchaser of the Equipment, or any Item thereof, so offered for sale without accountability to the Vendee (except to the extent of surplus money received as hereinafter provided in this Section), and in payment of the Purchase Price therefor the Manufacturer shall be entitled to have credited on account thereof all sums due to the Manufacturer from the Vendee hereunder.

15.5. Each and every power and remedy hereby specifically given to the Manufacturer shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the

right to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

15.6. All sums of money realized by the Manufacturer under the remedies herein provided shall be applied, first to the payment of the expenses and liabilities of the Manufacturer herein undertaken to be paid, second to the payment of interest on the indebtedness in respect of the Purchase Price of the Equipment and third to the payment, ratably in accordance with the unpaid balance of each installment, of the installments of indebtedness in respect of the Purchase Price of the Equipment accrued and unpaid. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Vendee.

15.7. Subject to Section 25 hereof, the Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

15.8. The foregoing provisions of this Section are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

#### SECTION 16. APPLICABLE STATE LAWS.

16.1. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale agreement and enforced as such.

16.2. Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any Item thereof, and any other requirements as to the time, place and terms of sale thereof, and other requirements with respect to the enforcement of the Manufacturers' rights hereunder and any and all rights of redemption.

SECTION 17. EXTENSION NOT A WAIVER.

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturers shall impair or affect the Manufacturers' right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Manufacturers' rights or the obligations of the Vendee hereunder. The Manufacturers' acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Manufacturers' rights hereunder with respect to any subsequent payments or defaults therein.

SECTION 18. RECORDING.

The Vendee will cause this Agreement, the first assignment hereof and any supplements hereto and thereto (or a financing or continuation statement or similar notice thereof if and to the extent permitted or required by applicable law) to be filed, recorded or deposited and re-filed, re-recorded or re-deposited, if necessary, in all public offices as may be required by law or or reasonably requested by the Manufacturers for the purpose of proper protection, to the satisfaction of counsel for the Manufacturer and the Assignee of the security title to the Equipment and the rights of the Manufacturer under this Agreement and of the Assignee under the Assignment or for the purpose of carrying out the intention of this Agreement and the Assignment; and the Vendee will promptly furnish to the Manufacturer certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Vendee with respect thereto, satisfactory to the Manufacturer.

SECTION 19. NOTICE.

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to the Vendee: First Maryland Leasecorp  
25 South Charles Street  
Baltimore, Maryland 21203  
Attention: Michael T. Pyles

(b) to the Manufacturers: ACF Industries, Inc.  
750 Third Avenue  
New York, New York 10017  
Attention: Secretary

Ortner Freight Car Company  
2652 Erie Avenue  
Cincinnati, Ohio 45208  
Attention: Vice President

(c) to the Agent:

First Security Bank of Utah,  
N.A.  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: Corporate Trust  
Department

or to any other assignee of the Manufacturers, or of the Vendee, at such address as may have been furnished in writing to the Vendee or the Manufacturers, as the case may be, by such assignee, or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

#### SECTION 20. HEADINGS.

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

#### SECTION 21. EFFECT AND MODIFICATION OF AGREEMENTS.

Except as provided in Section 3.1 hereof, this Agreement and the Schedules relating hereto together with the Operative Agreements as defined in the Participation Agreement, exclusively and completely state the rights and agreements of the Manufacturers and the Vendee with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Manufacturers and the Vendee.

#### SECTION 22. LAW GOVERNING.

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Maryland; provided, however, that the parties shall be entitled to all rights conferred by 49 USC Section 11303 of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

#### SECTION 23. DEFINITIONS.

The term "Manufacturers", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, ACF Industries, Inc. and Ortner Freight Car Company and any successor or successors for the time being to the properties and business of each, respectively, and, after any such assignment, any assignee or assignees for the time being of such particular assigned rights

as regards such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any assignment. The rights and undertakings of each Manufacturer and the rights and obligations of the Vendee with respect to each Manufacturer hereunder are several and not joint.

SECTION 24. ASSIGNMENT OVER AND GRANT OF SECURITY INTEREST IN THE LEASE.

24.1. In order to further secure the payment of the Conditional Sale Indebtedness, the interest thereon and the payment or performance of all of the Vendee's obligations contained in this Agreement, the Vendee hereby assigns, transfers and sets over to the Manufacturer and grants the Manufacturer a security interest in all right, title, interest, claims and demands of the Vendee as lessor in, under and to the Lease, including all extensions of the term of the Lease, together with all rights, powers, privileges, options and other benefits of the Vendee as lessor under the Lease, including, without limitation, but subject to the exceptions, reservations and limitations contained in Section 24.6 below:

(a) the immediate and continuing right to receive and collect all rentals, insurance proceeds, condemnation awards and other payments, tenders and security now or hereafter payable to or receivable by the Vendee under the Lease pursuant thereto;

(b) following the occurrence of an Event of Default hereunder, the right to make all waivers and agreements with respect to the Lease and prior to the occurrence of such Event of Default, the right to concur with the Vendee in any such waivers or agreements; and

(c) the right to take such action upon the occurrence of a default or an Event of Default under the Lease, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by Section 14 of the Lease or by law, and to do any and all other things whatsoever which the Vendee or any lessor is or may be entitled to do under the Lease;

it being the intent and purpose hereof that the assignment and transfer to the Manufacturer of said rights, powers, privileges, options and other benefits shall be effective and operative immediately and shall continue in full force and effect, and the Manufacturer shall have the right to collect and receive said rentals and other sums for application to the payment of the Conditional Sale Indebtedness, together with the interest thereon and the other obligations of the Vendee hereby secured at all times during the period from and after the date of this Agreement until the Conditional Sale Indebtedness, together with the interest thereon and all other obligations of the Vendee hereby secured have been fully paid and discharged.

24.2. Subject to Section 24.6 hereof, the Vendee agrees that it will not:

(a) declare a default or exercise the remedies of the lessor under, or terminate, modify or accept a surrender of, or offer or agree to any termination, modification, surrender or termination of, the Lease in respect of the Equipment (except as otherwise expressly provided herein) or by affirmative act consent to the creation or existence of any security interest or other lien to secure the payment of indebtedness upon the leasehold estate created by the Lease or any part thereof, unless it shall have received the written consent of the holders of not less than 66-2/3% of the aggregate principal amount of the Certificates of Interest then outstanding; and

(b) receive or collect or permit the receipt or collection of any rentals or Casualty Value payments prior to the date for the payment thereof provided for by the Lease (unless received without fault and promptly remitted to the Manufacturer) or assign, transfer or hypothecate (other than to the Manufacturer hereunder) any rentals or Casualty Value payments then due or to accrue in the future under the Lease.

24.3. The Vendee does hereby irrevocably constitute and appoint the Manufacturer its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rentals and other payments (except as set forth in Section 24.6 hereof) and sums which are assigned under Section 24.1 hereof and, following the occurrence of an Event of Default hereunder, full power to settle, adjust or compromise any claim thereunder as fully as the Vendee could itself do, and to endorse the name of the Vendee on all commercial paper given in payment or in part payment there, and in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of the Vendee or otherwise, which the Manufacturer may deem necessary or appropriate to protect and preserve the right, title and interest of the Manufacturer in and to such rentals and other payments and sums and the security intended to be afforded hereby.

24.4. This assignment being made only as security shall not subject the Manufacturer to, or transfer, or pass, or in any way affect or modify, the liability of the Vendee under the Lease, it being understood and agreed that notwithstanding this assignment, or any subsequent assignment, all obligations of the Vendee to the Lessee, shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Vendee. Further, the Vendee covenants and agrees that it will perform all its obligations to be performed under the terms of the Lease, and hereby irrevocably authorizes and empowers the Manufacturer, in its own name, or in the name of its nominee, or in the name of the Vendee, to perform or cause to be performed any such obligation.

24.5. Upon the full discharge and satisfaction of the full amount of the Conditional Sale Indebtedness, together with interest as herein provided and the performance of all of the Vendee's obligations herein contained, the assignment made hereby and all rights herein assigned to the Manufacturer shall cease and terminate, and the Lease shall revert to the Vendee.

24.6. There are expressly excepted and reserved from the assignment and security interest provided for in Section 23.1 above the following described properties, rights, interests and privileges:

(a) all payments of any indemnity under Section 6, 10.2 or 21 of the Lease which are payable to the Vendee for its own account;

(b) if an Event of Default under the Lease based on a breach of any covenant of the Lessee to pay any such indemnity or payment referred to under paragraph (a) of this Section 24.6 shall occur and be continuing, the right of the Vendee to declare that an Event of Default exists under the Lease and the right of the Vendee to exercise the remedies, but only those remedies, provided for in Section 14.2(a) of the Lease to enforce performance by the Lessee of any covenants of the Lessee to pay any such indemnity or payment directly to the Vendee or to recover damages for the breach thereof; and

(c) any insurance proceeds payable under insurance policies maintained by the Lessee pursuant to Section 11 of the Lease which by the terms of such policies or the terms of the Lease are payable directly to the Vendee for its own account.

## SECTION 25. LIMITATIONS OF LIABILITY.

25.1. It is expressly understood and agreed by and between the Vendee and the Manufacturer and their respective successors and assigns, anything in this Conditional Sale Agreement to the contrary notwithstanding, neither the Assignee nor any investor in the Conditional Sale Indebtedness nor the successors or assigns of any of said persons, shall have any claim, remedy or right to proceed against the Vendee in its individual corporate capacity or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of the Vendee for the payment of any deficiency or any other sum owing on account of the Conditional Sale Indebtedness or for the payment of any liability resulting from the breach of any representation, agreement or warranty of any nature whatsoever, from any source other than the Equipment and the security interest in the Lease granted pursuant to Section 24 hereof, including the sums due



and to become due under the Lease; and the Assignee by the execution of the Participation Agreement and the Investors in the Conditional Sale Indebtedness by acceptance thereof, waive and release any personal liability of the Vendee in its individual corporate capacity and any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of the Vendee for and on account of such indebtedness or such liability, and the Assignee and the Investors in the Conditional Sale Indebtedness agree to look solely to the Equipment and the security interest in the Lease granted pursuant to Section 24 hereof, including the sums due and to become due under the Lease for the payment of said indebtedness or the satisfaction of such liability; provided, however, nothing herein contained shall limit, restrict or impair the rights of the Investors in the Conditional Sale Indebtedness to accelerate the maturity of the Conditional Sale Indebtedness upon a default under this Conditional Sale Agreement; to bring suit and obtain a judgment against the Vendee on the Conditional Sale Indebtedness or to exercise all rights and remedies provided under this Conditional Sale Agreement or otherwise realize upon the Equipment and the security interest in the Lease granted pursuant to Section 24 hereof; provided, further, that nothing in this Section shall be construed to limit in scope or substance those representations and warranties of the Vendee in its individual capacity set forth in the Participation Agreement.

25.2. Without limiting the effect of Section 25.1 hereof, the obligations of the Vendee under Sections 2.4, 5, 6.1, 9.1, 10.1, 12.5, 15.2 and 15.7 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such undertakings, but if the same shall not be performed, they shall constitute the basis for an Event of Default hereunder pursuant to Section 14 hereof.

#### SECTION 26. EXECUTION.

This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by all of the parties hereto so long as at least one counterpart is signed by each party hereto. Although this Agreement is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers or representatives, thereunto duly authorized, and

their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

ACF INDUSTRIES, INC.

(Corporate Seal)

By \_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Assistant Secretary

ORTNER FREIGHT CAR COMPANY

By *W E Kemala*  
Vice President

Attest:

*[Signature]*  
Assistant Secretary

FIRST MARYLAND LEASECORP

(Corporate Seal)

By \_\_\_\_\_  
Its \_\_\_\_\_

Attest:

\_\_\_\_\_  
Assistant Secretary

STATE OF NEW YORK     )  
                              ) SS  
COUNTY OF NEW YORK    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

(Seal)

My Commission Expires:

STATE OF OHIO                 )  
                              ) SS  
COUNTY OF HAMILTON         )

On this 13<sup>th</sup> day of APRIL, 1979, before me personally appeared H. E. KENISTON, to me personally known, who, being by me duly sworn, says that he is a Vice President of ORTNER FREIGHT CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Howard E. Parr  
Notary Public

(Seal)

My Commission Expires:

HOWARD E. PARR  
Notary Public, State of Ohio  
My Commission Expires August 20, 1983

STATE OF MARYLAND        )  
                              )  SS  
COUNTY OF BALTIMORE    )

On this \_\_\_\_ day of \_\_\_\_\_, 1979, before  
me personally appeared \_\_\_\_\_, to me personally  
known, who, being by me duly sworn, says that he is a Vice  
President of FIRST MARYLAND LEASECORP, that one of the seals  
affixed to the foregoing instrument is the corporate seal of  
said corporation, that said instrument was signed and sealed  
on behalf of said corporation by authority of its Board of  
Directors, and he acknowledged that the execution of the foregoing  
instrument was the free act and deed of said corporation.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires:

SCHEDULE A

(to Conditional Sale Agreement)

MANUFACTURER ..... ACF Industries, Inc.

DESCRIPTION OF EQUIPMENT ..... 100 Covered Hopper Cars  
bearing Mark and Numbers  
MKT 400 to MKT 499,  
both inclusive

SPECIFICATIONS ..... ACF No. 78-OAO-115 of  
March 13, 1978

ESTIMATED PRICE ..... \$34,000

PLACE OF DELIVERY ..... Milton, Pennsylvania or such  
other place mutually acceptable  
to the Manufacturer, the Vendee  
and the Lessee

ESTIMATED DELIVERY DATES ..... December 1979 through January 1980

OUTSIDE DELIVERY DATE ..... March 31, 1980

SCHEDULE B

(to Conditional Sale Agreement)

MANUFACTURER .....	Ortner Freight Car Company
DESCRIPTION OF EQUIPMENT .....	100 Gondola Cars bearing Mark and Numbers MKT 12400 to MKT 12499, both inclusive
SPECIFICATIONS .....	OCN 1369-3-78, and amendments thereto
ESTIMATED PRICE .....	\$33,000
PLACE OF DELIVERY .....	Covington, Kentucky
ESTIMATED DELIVERY DATES .....	July - October, 1979
OUTSIDE DELIVERY DATE .....	December 31, 1979

SCHEDULE C

(to Conditional Sale Agreement)

AMORTIZATION SCHEDULE

(Payments Required Per \$1,000,000 Aggregate  
Amount of Conditional Sale Indebtedness)

<u>Payment No.</u>	<u>Portion Allocated to Interest</u>	<u>Portion Allocated to Principal</u>	<u>Total Payment</u>
1	26875.00	8222.03	35097.03
2	26654.03	8443.00	35097.03
3	26427.13	8669.90	35097.03
4	26194.12	8902.91	35097.03
5	25954.86	9142.17	35097.03
6	25709.16	9387.87	35097.03
7	25456.86	9640.17	35097.03
8	25197.79	9899.24	35097.03
9	24931.74	10165.29	35097.03
10	24658.55	10438.48	35097.03
11	24378.01	10719.02	35097.03
12	24089.94	11007.09	35097.03
13	23794.12	11302.91	35097.03
14	23490.36	11606.67	35097.03
15	23178.43	11918.60	35097.03
16	22858.12	12238.91	35097.03
17	22529.20	12567.83	35097.03
18	22191.44	12905.59	35097.03
19	21844.60	13252.43	35097.03
20	21488.44	13608.59	35097.03
21	21122.71	13974.32	35097.03
22	20747.15	14349.88	35097.03
23	20361.50	14735.53	35097.03
24	19965.48	15131.55	35097.03
25	19558.82	15538.21	35097.03
26	19141.23	15955.80	35097.03
27	18712.42	16384.61	35097.03
28	18272.08	16824.95	35097.03
29	17819.91	21908.48	39728.39
30	17231.12	22497.27	39728.39
31	16626.50	23101.89	39728.39
32	16005.64	23722.75	39728.39
33	15368.09	24360.30	39728.39
34	14713.41	25014.98	39728.39
35	14041.13	25687.26	39728.39
36	13350.79	26377.60	39728.39
37	12641.89	27086.50	39728.39

<u>Payment No.</u>	<u>Portion Allocated to Interest</u>	<u>Portion Allocated to Principal</u>	<u>Total Payment</u>
38	11913.94	27814.45	39728.39
39	11166.43	28561.96	39728.39
40	10398.83	29329.56	39728.39
41	9610.59	30117.81	39728.40
42	8801.18	30927.22	39728.40
43	7970.01	31758.38	39728.39
44	7116.51	32611.89	39728.40
45	6240.06	33488.33	39728.39
46	5340.07	34388.32	39728.39
47	4415.88	35312.51	39728.39
48	3466.86	36261.53	39728.39
49	2492.33	37236.06	39728.39
50	1491.61	38236.78	39728.39
51	463.99	17264.62	17728.61



Each Manufacturer for itself warrants that the Items of Equipment to be built by it will be built in accordance with the Specifications therefor and warrants that such Items of Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Lessee and not manufactured by the Manufacturer, in respect of which the Manufacturer hereby appoints and constitutes the Lessee, its agent and attorney in-fact to assert and enforce from time to time in the name of the Manufacturer but for the account of the Lessee as its interests may appear and in all cases at the sole cost and expense of the Lessee whatever claims and rights the Manufacturer may have against the manufacturer of the specialty) or workmanship under normal use and service, the Manufacturer's obligation under this Section being limited to making good at its plant any part or parts of any such Item of Equipment which shall within one year after the delivery of such Item of Equipment to the Lessee under the Lease, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective; provided, however, that this warranty shall not apply to (i) any components which shall have been repaired or altered unless repaired or altered by the Manufacturer or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of any such Item of Equipment, or (ii) any Item of Equipment which has been subject to misuse, negligence or accident. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE MANUFACTURER, EXCEPT FOR ITS OBLIGATIONS HEREUNDER AS LIMITED HEREBY, AND THE MANUFACTURER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT EXCEPT AS AFORESAID AND EXCEPT FOR PATENT INDEMNITIES CONTAINED IN SECTION 11 HEREOF. IN NO EVENT SHALL THE MANUFACTURER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR COMMERCIAL LOSS. The Manufacturer reserves the right to make changes in the design of, or add any improvements to, any Items of Equipment to be built by it at any time with the approval of the Vendee and the Lessee. The Manufacturer further agrees with the Vendee and the Lessee that acceptance of any Items of Equipment under Section 2.4 of the Conditional Sale Agreement shall not be deemed a waiver by the Vendee and the Lessee of any of their respective rights under the provisions of this paragraph.

It is hereby agreed that the Lessee shall be and it is hereby constituted a third party beneficiary to each of the covenants and agreements of the Manufacturer expressed above.

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CONDITIONAL SALE AGREEMENT

Dated as of December 20, 1978

Among

ACF INDUSTRIES, INC.

and

ORTNER FREIGHT CAR COMPANY

Manufacturers

and

FIRST MARYLAND LEASECORP

Vendee

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(KATY No. 79-1)  
(100 Covered Hopper & 100 Gondola Cars)

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### ATTACHMENTS TO CONDITIONAL SALE AGREEMENT:

Schedules A and B -- Descriptions of Equipment  
Schedule C -- Amortization Schedule

## CONDITIONAL SALE AGREEMENT

This CONDITIONAL SALE AGREEMENT dated as of December 20, 1978 among ACF INDUSTRIES, INC. and ORTNER FREIGHT CAR COMPANY (said parties being hereinafter sometimes collectively referred to as the "Manufacturers" and individually as a "Manufacturer") and FIRST MARYLAND LEASECORP (the "Vendee");

### R E C I T A L S:

Each Manufacturer is willing to construct, sell and deliver to the Vendee, and the Vendee is willing to purchase, the railroad equipment to be built by such Manufacturer as described in Schedules A and B attached hereto (collectively the "Equipment" or "Items" and individually "Item of Equipment" or "Item").

The following terms shall have the following meanings unless the context shall otherwise require:

1. "Participation Agreement" shall mean the Participation Agreement dated as of December 20, 1978 among the Lessee, the Vendee, the Assignee and the parties named in Schedule 1 thereto (the "Investors").

2. "Assignment" shall mean the Agreement and Assignment dated as of December 20, 1978 between the Manufacturers and the Assignee.

3. "Assignee" shall mean First Security Bank of Utah, N.A., as agent and assignee under the Assignment, and its successors in interest thereunder.

4. "Lease" shall mean the Equipment Lease dated as of December 20, 1978 between the Vendee, as lessor, and the Lessee.

5. "Lessee" shall mean MISSOURI-KANSAS-TEXAS RAILROAD COMPANY.

In consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

### SECTION 1. CONSTRUCTION AND SALE.

Each of the Manufacturers will construct, sell and deliver to the Vendee, and the Vendee will purchase from such Manufacturer and accept delivery of and pay for as hereinafter provided, those Items of Equipment which are indicated on Schedules

A and B to be constructed and sold by such Manufacturer, each Item of which shall be constructed in accordance with the applicable specifications referred to in said Schedules A and B with such modifications thereof as may be agreed upon in writing by the Vendee and the Manufacturer thereof (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design and quality of equipment and material used in the manufacture of such Items shall conform to all Department of Transportation requirements and specifications for new equipment, and to all standards recommended by the Association of American Railroads, interpreted as being applicable to the new railroad equipment of the character of such Items as of the date of this Agreement.

## SECTION 2. DELIVERY.

2.1. Each Manufacturer will deliver the various Items of Equipment to be manufactured by it to the Vendee in accordance with the delivery schedule set forth in Schedules A and B attached hereto; provided, however, that the Manufacturers shall have no obligation to deliver any Item of Equipment hereunder if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute an Event of Default, has occurred and is continuing.

2.2. Each Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Manufacturer's reasonable control, including, but not limited to, act of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riots or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

2.3. Notwithstanding the foregoing provisions, in this Section 2, the Vendee shall not be obligated hereunder to accept and pay for any Equipment not delivered and accepted on or before the outside delivery date provided therefor in Schedule A or Schedule B as the case may be attached hereto. Any Equipment not so delivered and accepted pursuant to the first sentence of this Section 2.3 and any Equipment not so delivered and accepted pursuant to Sections 2.1 and 2.4 hereof shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Vendee and such Manufacturer shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not excluded herefrom, and such Manufacturer agrees to look solely to the obligations of the Lessee pursuant to Section 1.4 of the Lease in respect of such excluded Item of Equipment.

2.4. The Equipment during construction shall be subject to inspection by one or more inspectors or other authorized representatives of the Lessee and the Vendee. Upon completion of each Item of Equipment by the Manufacturer thereof, it shall

be presented to such inspectors or representatives for inspection at the place designated herein for delivery of such Item of Equipment. Acceptance of any Items of Equipment by the Lessee under Section 1.2 of the Lease shall be deemed to be acceptance of such by the Vendee hereunder, and the Lease will provide that the Lessee shall furnish the Certificate or Certificates of Acceptance, on behalf of the Lessee and on behalf of the Vendee, to the Manufacturer of an Item in such number of counterparts as may be reasonably requested.

2.5. The Manufacturer of each Item of Equipment shall bear the risk of loss of each Item of Equipment or damage thereto until delivery to and acceptance by the Lessee pursuant to the Lease. Upon delivery and acceptance by the Lessee of each such Item of Equipment the Vendee shall bear the risk of loss of or damage to such Item as between the Vendee and the Manufacturer thereof.

### SECTION 3. PURCHASE PRICE AND PAYMENT.

3.1. The estimated price per Item of Equipment, including freight charges, if any, to place of delivery, but exclusive of interest and all other charges, is as set forth in Schedules A and B attached hereto. The estimated price per Item of Equipment shall be subject to increase or decrease as provided by the prior contractual arrangements with the Manufacturer (the "Purchase Agreements") or as may otherwise be agreed to by the Manufacturer thereof, the Lessee and the Vendee, and the term "Purchase Price" as used herein shall mean the estimated price as so increased or decreased; provided that the Purchase Price for any Item of Equipment manufactured by Ortner Freight Car Company shall not exceed \$34,500, the Purchase Price for any Item of Equipment manufactured by ACF Industries Inc. shall not exceed \$35,200 and the Purchase Price for all Equipment shall not exceed the sum of \$6,970,000. If the Purchase Price of any Item of Equipment then ready to be delivered by a Manufacturer hereunder and under the Lease would, upon such delivery, cause the aggregate Purchase Price for all Items of Equipment theretofore delivered hereunder, when taken together with the Purchase Price of such additional Item of Equipment, to exceed the sum of \$6,970,000 for all Items of Equipment, then each Manufacturer agrees that it will withhold delivery of such Item of Equipment and all other Items of Equipment then remaining undelivered hereunder and under the Lease and the Vendee and the Manufacturers agree that such Item or Items of Equipment will be excluded from this Agreement and the Manufacturer agrees to look solely to the obligation of the Lessee pursuant to Section 1.4 of the Lease in respect of such excluded Equipment.

3.2. For the purpose of making settlement for the Equipment, the Equipment shall be divided into not more than five groups of Items of Equipment, or such other number as shall be agreed to by the parties hereto (each such group of Items being hereinafter called a "Group").

3.3. The Vendee hereby acknowledges itself to be indebted to the respective Manufacturers in the amount of, and hereby promises to pay to the respective Manufacturers at such bank or trust company in the United States as each of the Manufacturers or its assignee shall designate for payment to it in funds payable by check drawn on a bank within the Continental United States, the Purchase Price of the Items of Equipment in each Group, as follows:

(a) On the Closing Date for the Group for which settlement is then being made, an amount equal to 33.2593% of the Purchase Price of the Items of Equipment in such Group; and

(b) An amount equal to the difference between the entire Purchase Price of the Items of Equipment in such Group and the amount paid pursuant to subparagraph (a) above (such amount sometimes hereinafter referred to as the "Conditional Sale Indebtedness") plus interest on the unpaid balance thereof payable in installments as follows:

(1) One installment of interest only at the rate of 10-3/4% per annum for the period from and including the Closing Date as defined in the to Participation Agreement to but not including the Term Lease Commencement Date (as defined in the Lease), payable on the Term Lease Commencement Date, followed by

(2) Fifty (50) quarterly installments, each including both principal and interest at the rate of 10-3/4% per annum, the first such installment payable three months following the installment of interest only referred to in clause (1) above and the remaining such installments to be payable at three-month intervals thereafter in amounts in accordance with the Amortization Schedule C attached thereto, followed by

(3) A final installment, due and payable three months following the final installment referred to in clause (2) above, in an amount equal to the entire principal of and interest remaining unpaid on the Conditional Sale Indebtedness on said date.

3.4. The term "Closing Date" with respect to each Group shall mean such date not later than March 31, 1980 which is not more than ten business days following presentation by the Manufacturer or Manufacturers, as the case may be, of the Items of Equipment included in such Group to the Lessee of those items required to be delivered by the Manufacturer pursuant to the Participation Agreement as shall be fixed by the Lessee by written or telegraphic notice

delivered to such Manufacturer or Manufacturers and any assignee and Vendee thereof at least five business days prior to the Closing Date designated therein. Prior to the first Closing Date, the Vendee shall furnish to the Manufacturer a Kentucky Sales Tax Exemption Certificate in form and substance satisfactory to the Manufacturer's counsel, certifying that all Equipment being purchased pursuant to this Agreement is exempt from the application of the Kentucky sales tax.

3.5. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of Utah, Maryland or Texas are authorized or required to close. If any date on which a payment is to be made hereunder is not a business day, the amount otherwise payable on such date shall be payable on the next succeeding business day, and no interest on such amount shall accrue for the period from and after the nominal date for payment thereof to such next succeeding business day.

3.6. Interest under this Agreement shall be determined on a basis of a 360-day year of twelve 30-day months except that interest on the interim installment provided for in Section 3.3 (b)(1) hereof shall be determined on an actual day basis of a 365 day year.

3.7. The Vendee will pay interest at the rate of 11-3/4% per annum upon all unpaid balances of indebtedness and (to the extent legally enforceable) upon interest, after the same shall have become due and payable pursuant to the terms hereof.

3.8. All payments provided for in this Agreement shall be made by the Vendee in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

3.9. Except as provided in Section 6 and Section 14.3, the Vendee shall not have the privilege of prepaying any installment of the indebtedness prior to the date it becomes due hereunder.

#### SECTION 4. TITLE TO THE EQUIPMENT.

4.1. Title to the Equipment shall pass to the Vendee subject to retention of security title by each Manufacturer in the Equipment built by it until the Vendee shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee as herein provided. Any and all additions to the Equipment which become the property of the Vendee pursuant to the Lease



and any and all additions to the Equipment and replacements of parts thereof shall constitute accessions to the Equipment and shall be subject to all terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

4.2. When and only when each Manufacturer shall have been paid in full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided and all the Vendee's other obligations herein contained shall have been performed, absolute right to the possession of, absolute title to and property in the Equipment shall pass to and vest in the Vendee or its successors or assigns without further transfer or action on the part of such Manufacturer except that each Manufacturer, if requested by the Vendee so to do, will execute a bill or bills of sale of the Equipment releasing its security title thereto and property therein to the Vendee or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address specified in Section 19 hereof, and will execute in the same manner and deliver at the same place, for filing, registering, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment, and will pay to the Vendee any money paid to such Manufacturer, pursuant to Section 6 hereof and not therefore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand by the Vendee.

#### SECTION 5. MARKING OF EQUIPMENT.

The Vendee will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedules A and B hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon both sides of each Item of Equipment in letters not less than one inch in height, the words "Unit Subject to Security Interest of Agent Bank under Conditional Sale Agreement Recorded with the I.C.C.", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security title of the Manufacturer thereof to such Item of Equipment, its rights under this Agreement and the rights of any assignee under Section 14 hereof.

## SECTION 6. CASUALTY OCCURRENCES.

6.1. In the event that any Item of Equipment shall be or become lost, stolen, destroyed or, in the reasonable opinion of the Lessee pursuant to Section 11.2 of the Lease, irreparably damaged or permanently rendered unfit for use from any cause whatsoever during the term of this Agreement, or title or use thereof shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise during the term of this Agreement for a stated period which exceeds the then remaining term of the Lease (any such occurrence being hereinafter referred to as a "Casualty Occurrence"), the Vendee shall promptly and fully (after it has actual knowledge of such Casualty Occurrence), inform the Manufacturer thereof in regard thereto. When any Item of Equipment suffers a Casualty Occurrence the Vendee, on the next following due date for Conditional Sale Indebtedness following its determination that a Casualty Occurrence has taken place with respect to any Item of Equipment shall pay to the Manufacturer thereof the Casualty Payment (as defined in Section 6.4 hereof) of such Item as of the date of such payment. Each such payment shall be accompanied by notification from the Vendee identifying the amount thereof and stating that said payment constitutes a Casualty Payment.

6.2. Such Manufacturer shall, immediately upon receipt thereof, apply the money deposited pursuant to Section 6.1 to the prepayment of that portion of the Conditional Sale Indebtedness in respect of the Purchase Price of any Items of Equipment having suffered a Casualty Occurrence, plus interest then accrued on the portion thereof so prepaid, but without premium. The quarterly payments of principal of and interest on the Conditional Sale Indebtedness relating to the remaining Equipment and interest thereon becoming due thereafter shall be redetermined on the basis of the amount of such Conditional Sale Indebtedness remaining unpaid and on the basis of the number of quarterly payments remaining immediately after such application. Promptly following such redetermination, the Vendee will furnish to the Assignee and the Lessee a revised schedule of payments of principal and interest thereafter to be made hereunder in such number of counterparts as any such party may reasonably request.

6.3. Upon payment to such Manufacturer of the Casualty Payment in respect of an Item of Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such Item shall automatically pass to and vest in the Vendee without further transfer or action on the part of the Manufacturer thereof. Such Manufacturer, if requested by the Vendee, will execute and deliver to the Vendee, at its address specified in Section 18 hereof, at the reasonable expense of the Vendee, appropriate instruments confirming such release to the Vendee of security title to and property in such Item, free of all liens and encumbrances created or retained hereby, in

recordable form in order that the Vendee may make clear upon the public records the title of the Vendee to such Item.

6.4. The Casualty Payment in respect of each Item of Equipment having suffered a Casualty Occurrence shall be deemed to be that portion of the Conditional Sale Indebtedness related to such Item remaining unpaid on the date as of which such Casualty Payment shall be determined, plus interest accrued thereon but unpaid as of such date.

6.5. In the event that during the term of the Lease the use of or title to any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise, for an indefinite period or for a stated period which does not exceed the term of the Lease, then the Vendee's duty to pay the indebtedness in respect of the Purchase Price thereof shall continue for the duration of such requisitioning or taking. The Vendee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

#### SECTION 7. REPORTS AND INSPECTIONS.

Each Manufacturer shall have the right, by its agents, to inspect the Items of Equipment built by it whenever available for such inspection and to further inspect the records of the Vendee with respect thereto once in every year at reasonable times.

#### SECTION 8. POSSESSION AND USE.

8.1. The Vendee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturers to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

8.2. The Vendee may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in Section 17 of the Lease, and it is hereby acknowledged and agreed that the rights of the Manufacturers under this Agreement are subject to the rights and interest of the Lessee under the Lease. A copy of any assignment made by the Lessee pursuant to Section 17 of the Lease of any consent thereunder shall be furnished to the Manufacturer; provided that each Manufacturer hereby acknowledges receipt of an executed copy of the Lease. The Lease shall not be amended or terminated without the prior written consent of each Manufacturer, which consent shall not be unreasonably withheld.

#### SECTION 9. PROHIBITION AGAINST LIENS.

9.1. The Vendee will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Vendee or its

successors or assigns (other than the Lessee or their respective assigns) which, if unpaid, might become a lien or a charge upon any Item of Equipment equal or superior to the security title of the Manufacturer, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

9.2. This covenant will not in any event be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

#### SECTION 10. INDEMNITIES.

10.1. The Vendee shall cause the Lessee to assume all risk and expense arising from the possession, use, operation and maintenance of the Equipment.

10.2. Except to the extent provided in Section 2.5 hereof, the Vendee will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Item or of all the Equipment.

10.3. The warranties of each Manufacturer with respect to defects in material or workmanship of the Items of Equipment to be built by such Manufacturer are set forth in Annex A hereto.

#### SECTION 11. PATENT INDEMNITIES.

11.1. Except in cases of designs specified by the Lessee and not developed or purported to be developed by a Manufacturer, and articles and materials specified by the Lessee and not manufactured by such Manufacturer, such Manufacturer agrees to indemnify, protect and hold harmless the Vendee and the Lessee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee because of the use, in or about the construction or operation of any Item of Equipment to be built by such Manufacturer, of any design, article or material which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. In case any Item of Equipment is held to constitute infringement of any patent or any similar right in respect of which liability may be charged against a Manufacturer, and the use of any Item of Equipment to be built by such Manufacturer is enjoined, such Manufacturer shall, at its own expense and at its option, either procure for the Vendee and the Lessee the

right to continue using such Item of Equipment or replace the same with noninfringing equipment or modify it so that it becomes noninfringing. Without intending any limitation of the foregoing, each Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right and cause of action hereinafter referred to, transfer, assign, set over and deliver to the Vendee every claim, right and cause of action which such Manufacturer has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by such Manufacturer for use in or about the construction or operation of the Items of Equipment to be built by such Manufacturer on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right and each Manufacturer further agrees to execute and deliver to the Vendee all and every such further assurance as may be reasonably requested by the Vendee, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. Each Manufacturer will give notice to the Vendee of any claim known to such Manufacturer from which liability may be charged against the Vendee hereunder and the Vendee will give notice to each Manufacturer of any claim known to it from which liability may be charged against such Manufacturer hereunder.

11.2. The term "design" wherever used in this Agreement or in any assignment of this Agreement shall be deemed to include formulae, systems, processes and combinations.

11.3. The obligations and liabilities of the Manufacturer under this Section shall apply only to Equipment located and used in the continental United States, Canada and Mexico.

11.4. It is hereby agreed that the Lessee shall be and it is hereby constituted a third party beneficiary to each of the covenants and agreements of the Manufacturers expressed in this Section 11.

## SECTION 12. ASSIGNMENTS.

12.1. The Vendee will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in the Lease and the Participation Agreement, transfer the right to possession of any Item of Equipment without first obtaining the written consent of the Manufacturers, which consent shall not be unreasonably withheld. No such sale, assignment or transfer shall subject the Manufacturers to any duty, obligation or liability whatsoever.

12.2. All or any of the rights, benefits and advantages of the Manufacturers under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned

by the Manufacturers and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturers from, any of the obligations of the Manufacturers to construct and deliver the Equipment in accordance with Sections 1 and 2.1 hereof, or to respond to its warranties and indemnities contained in Sections 11.3 and 12 hereof, or relieve the Vendee of its obligations to the Manufacturers hereunder.

12.3. Upon any such assignment either the assignor or the assignee shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Manufacturers' right security title and interest in and to the Equipment subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee, of the notification of any such assignment, all payments thereafter to be made by the Vendee hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

12.4. The Vendee recognizes that it is the custom of equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or some or all of the rights of the Manufacturers hereunder, is contemplated. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Manufacturers hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Manufacturers as hereinbefore provided the rights of such assignee to the entire unpaid Conditional Sale Indebtedness or such part thereof as may be assigned, together with the interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of any Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by any Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against such Manufacturer.

12.5. In the event of any such assignment or successive assignments by the Manufacturers of security title to the Equipment and of the rights thereof hereunder with respect thereto, the Vendee will, whenever requested by such assignee, change the names and word or words to be marked on each side of each Item of Equipment or, in the event such Item shall then be leased to the Lessee, the Vendee will use its best efforts to cause the Lessee pursuant to Section 4 of the Lease to change the names and word or words to be marked on each side of such Item, so as to indicate the security title of such assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the

laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such names and word or words with respect to the first assignee of this Agreement (or to a successor agent or trustee in case the first assignee is an agent or trustee) and with respect to the Vendee shall be borne by the Manufacturer. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent or trustee if the first assignee is an agent or trustee) will be borne by the subsequent assignee.

12.6. In the event of any such assignment prior to the completion of delivery of the Equipment, the Vendee will, in connection with settlement for any Group of Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date with respect to such Group, all documents, reasonably required by the terms of such assignment to be delivered by the Vendee to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested.

12.7. Nothing in this Section 12 shall be deemed to restrict the right of the Vendee to assign or transfer its interest under this Agreement in the Equipment to any corporation into or with which the Vendee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the property of the Vendee, provided that such assignee, successor or transferee shall have duly assumed the obligations of the Vendee hereunder and that it will not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Agreement and that such merger or consolidation or acquisition of properties shall not alter in any way the Vendee's obligations hereunder which shall be and remain those of a principal and not a guarantor.

SECTION 13. APPLICATION OF PROVISIONS OF SECTION 14, "DEFAULTS", AND SECTION 15, "REMEDIES".

It is contemplated that each Manufacturer will, coincidentally with the execution and delivery of this Agreement, assign certain of its rights under this Agreement, and all its respective right, security title and interest in and to the Equipment to the Agent. It is desired by the parties hereto that the Agent should upon such assignment be entitled to enforce any remedies in case of default by the Vendee in respect of its obligations under this Agreement with any of the Manufacturers as if such breach were a default in respect of the Vendee's obligations under this Agreement with each of the Manufacturers. Accordingly, on the assumption that such assignments to the Agent will be made by each Manufacturer, the defaults and the remedies therefor as set forth in Sections 14 and 15 hereof are set forth as if there were a single Manufacturer.

SECTION 14. DEFAULTS.

14.1. In the event that any one or more of the following events of default ("Events of Default") shall occur and be continuing, to-wit:

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due under Section 3 or 6 hereof and such default shall continue for ten days; or

(b) The Vendee shall fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Manufacturer for such compliance for more than 30 days after written notice from the Manufacturer specifying the default and demanding the same to be remedied; or

(c) Any representation or warranty made by the Vendee herein or in any statement or certificate furnished to the Manufacturer or any assignee of the Agreement, the Agreement and Assignment, the Lease or the Participation Agreement proves untrue in any material respect as of the date of issuance or making thereof; or

(d) An Event of Default (as defined in the Lease) shall have occurred and be continuing under the Lease; or

(e) The Vendee becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they may mature, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for the Lessee or for the major part of its property; or

(f) A trustee or receiver is appointed for the Vendee or for the major part of its property and is not discharged within sixty (60) days after such appointment; or

(g) Any other proceedings shall be commenced by or against the Vendee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and (unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Vendee under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by



trustee or trustees or receiver or receivers appointed for the Vendee or for the property of the Vendee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(h) The Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Item of Equipment;

then at any time after the occurrence and during the continuance of such an Event of Default the Manufacturer may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 11-3/4% per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled subject to the provisions of Section 25 of this Agreement to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of the Vendee's interest in the Equipment.

14.2. The Manufacturer may waive any such Event of Default and its consequences and rescind and annul any such declaration by notice to the Vendee in writing to that effect. Upon any such waiver the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

14.3. Any default under Section 14.1(d) hereunder shall be deemed cured and not continuing if the Vendee, prior to any sale by the Manufacturer of the Equipment as provided in Section 15.3, shall pay or cause to be paid to the Manufacturer the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement.

14.4. Except as hereinafter provided, if an Event of Default under the Lease of which the Manufacturer has knowledge shall have occurred and be continuing the Manufacturer shall give the Vendee not less than 10 days' prior written notice of the date (the "Enforcement Date") on which the Manufacturer will exercise any remedy or remedies pursuant to Sections 14.1 and 15 hereof.

In the event of the occurrence of an Event of Default in respect of the payment of Fixed Rental under the Lease (as defined therein) on the day it becomes due and payable (unless there shall have occurred and be continuing any Event of Default under the Lease other than a failure to pay Fixed Rental), the Vendee may, prior to the Enforcement Date, pay to the Manufacturer an amount equal to any principal and interest (including interest, if any, on overdue payments of principal and interest) then due and payable on the Conditional Sale Indebtedness, and such payment by the Vendee shall be deemed to cure any Event of Default under this Agreement which would otherwise have arisen on account of the non-payment by the Lessee of such installment of Fixed Rental under the Lease; provided, however, that the Vendee may not exercise such right in respect of more than two consecutive Fixed Rental payment defaults or in any event more than a total of four times throughout the term of the Lease.

Except as hereinafter in this Section 14.4 provided, the Vendee shall not, by exercising the right to cure any such Event of Default, impair the prior right and security title of the Manufacturer in and to the Collateral. Upon such payment by the Vendee of the amount of principal and interest then due and payable on the Conditional Sale Indebtedness, the Vendee shall be subrogated to the rights of the Manufacturer in respect of the Fixed Rental which was overdue at the time of such payment and interest payable by the Lessee on account of its being overdue, and therefore, if no other Event of Default shall have occurred and be continuing and if all principal and interest payments due on the Conditional Sale Indebtedness have been paid at the time of receipt by the Vendee of such Fixed Rental, the Vendee shall be entitled to received such Fixed Rental and such interest upon receipt thereof by the Manufacturer; provided that (i) in the event the principal and interest on the Conditional Sale Indebtedness shall have become due and payable pursuant to Section 14.1 hereof, such subrogation shall until principal of and interest on all Conditional Sale Indebtedness shall have been paid in full, be subordinate to the rights of the Manufacturer in respect of such payment of Fixed Rental and such interest on such overdue Fixed Rental prior to receipt by the Vendee of any amount pursuant to such subrogation, and (ii) the Vendee shall not be entitled to seek to recover any such payment (or any payment in lieu thereof) except pursuant to the foregoing right of subrogation.

14.5. If the Manufacturer has declared the Conditional Sale Indebtedness to be immediately due and payable pursuant to Section 14.1 hereof or an Event of Default has occurred, whether or not such declaration is made, and subsequent to such declaration or Event of Default, as the case may be, all arrears of (i) principal and interest on the Conditional Sale Indebtedness (including, to the extent permitted by law, interest at the rate specified in this Agreement on overdue interest), (ii) all expenses of the

Manufacturer, its agents and attorneys, and (iii) any other amounts which may be due and owing as provided herein, have been paid in full by the Vendee, and all events of default herein (other than payment of principal and accrued interest accelerated by a declaration pursuant to Section 14.1 above) shall have been made good or cured to the full satisfaction of the Investors, then, and in every such case, the Investors holding not less than 66-2/3% of the Conditional Sale Indebtedness then outstanding may, in their sole and absolute discretion, waive any such Event of Default and its consequences and rescind any such declaration. Thereupon, the Vendee and the Manufacturer shall be restored in full to their former respective positions and rights hereunder; but no such waiver shall in any way extend to or affect any subsequent default or impair or exhaust any right or power consequent thereon.

#### SECTION 15. REMEDIES.

15.1. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Manufacturer may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Manufacturer, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any Item thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 17 expressly provided, and may remove the same from possession and use of the Vendee and for such purpose may enter upon the premises of the Vendee or where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Lessee, with or without process of law.

15.2. In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Lessee for the delivery of the Equipment to the Manufacturer, the Vendee shall use its best efforts to cause the Lessee at its own expense, forthwith and in the usual manner, to cause the Equipment to be moved to such point or points as shall be reasonably designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer, subject to the rights, if any, of the Lessee to the use and possession of the Equipment under the Lease; and, at the option of the Manufacturer, to permit the Manufacturer to keep the Equipment on any of the railroad lines or premises of the Lessee until the Manufacturer shall have leased, sold or otherwise disposed of the same. The

agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any Item of Equipment in any reasonable manner.

15.3. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided, the Manufacturer with or without retaking possession thereof may at its election, sell the Equipment, or any Item thereof, free from any and all claims of the Vendee, or of any other party claiming by, through or under the Vendee (but subject to the then existing rights of the Lessee under the Lease, if any), at law or in equity, at public or private sale and with or without advertisement as the Manufacturer may determine and as is commercially reasonable; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Equipment, shall be credited to the amount due to the Manufacturer under the provisions of this Agreement.

15.4. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Manufacturer may determine, provided that the Vendee shall be given written notice of such sale not less than ten business days prior thereto, by mail addressed as provided herein and provided further that such sale shall be conducted in a commercially reasonable manner. If such sale shall be a private sale, it shall be subject to the rights of the Vendee to purchase or provide a purchaser, within ten business days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Manufacturer may bid for and become the purchaser of the Equipment, or any Item thereof, so offered for sale without accountability to the Vendee (except to the extent of surplus money received as hereinafter provided in this Section), and in payment of the Purchase Price therefor the Manufacturer shall be entitled to have credited on account thereof all sums due to the Manufacturer from the Vendee hereunder.

15.5. Each and every power and remedy hereby specifically given to the Manufacturer shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the

right to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

15.6. All sums of money realized by the Manufacturer under the remedies herein provided shall be applied, first to the payment of the expenses and liabilities of the Manufacturer herein undertaken to be paid, second to the payment of interest on the indebtedness in respect of the Purchase Price of the Equipment and third to the payment, ratably in accordance with the unpaid balance of each installment, of the installments of indebtedness in respect of the Purchase Price of the Equipment accrued and unpaid. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Vendee.

15.7. Subject to Section 25 hereof, the Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

15.8. The foregoing provisions of this Section are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

#### SECTION 16. APPLICABLE STATE LAWS.

16.1. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale agreement and enforced as such.

16.2. Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any Item thereof, and any other requirements as to the time, place and terms of sale thereof, and other requirements with respect to the enforcement of the Manufacturers' rights hereunder and any and all rights of redemption.

SECTION 17. EXTENSION NOT A WAIVER.

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturers shall impair or affect the Manufacturers' right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Manufacturers' rights or the obligations of the Vendee hereunder. The Manufacturers' acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Manufacturers' rights hereunder with respect to any subsequent payments or defaults therein.

SECTION 18. RECORDING.

The Vendee will cause this Agreement, the first assignment hereof and any supplements hereto and thereto (or a financing or continuation statement or similar notice thereof if and to the extent permitted or required by applicable law) to be filed, recorded or deposited and re-filed, re-recorded or re-deposited, if necessary, in all public offices as may be required by law or or reasonably requested by the Manufacturers for the purpose of proper protection, to the satisfaction of counsel for the Manufacturer and the Assignee of the security title to the Equipment and the rights of the Manufacturer under this Agreement and of the Assignee under the Assignment or for the purpose of carrying out the intention of this Agreement and the Assignment; and the Vendee will promptly furnish to the Manufacturer certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Vendee with respect thereto, satisfactory to the Manufacturer.

SECTION 19. NOTICE.

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to the Vendee: First Maryland Leasecorp  
25 South Charles Street  
Baltimore, Maryland 21203  
Attention: Michael T. Pyles

(b) to the Manufacturers: ACF Industries, Inc.  
750 Third Avenue  
New York, New York 10017  
Attention: Secretary

Ortner Freight Car Company  
2652 Erie Avenue  
Cincinnati, Ohio 45208  
Attention: Vice President

(c) to the Agent:

First Security Bank of Utah,  
N.A.  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: Corporate Trust  
Department

or to any other assignee of the Manufacturers, or of the Vendee, at such address as may have been furnished in writing to the Vendee or the Manufacturers, as the case may be, by such assignee, or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

#### SECTION 20. HEADINGS.

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

#### SECTION 21. EFFECT AND MODIFICATION OF AGREEMENTS.

Except as provided in Section 3.1 hereof, this Agreement and the Schedules relating hereto together with the Operative Agreements as defined in the Participation Agreement, exclusively and completely state the rights and agreements of the Manufacturers and the Vendee with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Manufacturers and the Vendee.

#### SECTION 22. LAW GOVERNING.

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Maryland; provided, however, that the parties shall be entitled to all rights conferred by 49 USC Section 11303 of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

#### SECTION 23. DEFINITIONS.

The term "Manufacturers", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, ACF Industries, Inc. and Ortner Freight Car Company and any successor or successors for the time being to the properties and business of each, respectively, and, after any such assignment, any assignee or assignees for the time being of such particular assigned rights

as regards such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any assignment. The rights and undertakings of each Manufacturer and the rights and obligations of the Vendee with respect to each Manufacturer hereunder are several and not joint.

SECTION 24. ASSIGNMENT OVER AND GRANT OF SECURITY INTEREST IN THE LEASE.

24.1. In order to further secure the payment of the Conditional Sale Indebtedness, the interest thereon and the payment or performance of all of the Vendee's obligations contained in this Agreement, the Vendee hereby assigns, transfers and sets over to the Manufacturer and grants the Manufacturer a security interest in all right, title, interest, claims and demands of the Vendee as lessor in, under and to the Lease, including all extensions of the term of the Lease, together with all rights, powers, privileges, options and other benefits of the Vendee as lessor under the Lease, including, without limitation, but subject to the exceptions, reservations and limitations contained in Section 24.6 below:

(a) the immediate and continuing right to receive and collect all rentals, insurance proceeds, condemnation awards and other payments, tenders and security now or hereafter payable to or receivable by the Vendee under the Lease pursuant thereto;

(b) following the occurrence of an Event of Default hereunder, the right to make all waivers and agreements with respect to the Lease and prior to the occurrence of such Event of Default, the right to concur with the Vendee in any such waivers or agreements; and

(c) the right to take such action upon the occurrence of a default or an Event of Default under the Lease, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by Section 14 of the Lease or by law, and to do any and all other things whatsoever which the Vendee or any lessor is or may be entitled to do under the Lease;

it being the intent and purpose hereof that the assignment and transfer to the Manufacturer of said rights, powers, privileges, options and other benefits shall be effective and operative immediately and shall continue in full force and effect, and the Manufacturer shall have the right to collect and receive said rentals and other sums for application to the payment of the Conditional Sale Indebtedness, together with the interest thereon and the other obligations of the Vendee hereby secured at all times during the period from and after the date of this Agreement until the Conditional Sale Indebtedness, together with the interest thereon and all other obligations of the Vendee hereby secured have been fully paid and discharged.



24.2. Subject to Section 24.6 hereof, the Vendee agrees that it will not:

(a) declare a default or exercise the remedies of the lessor under, or terminate, modify or accept a surrender of, or offer or agree to any termination, modification, surrender or termination of, the Lease in respect of the Equipment (except as otherwise expressly provided herein) or by affirmative act consent to the creation or existence of any security interest or other lien to secure the payment of indebtedness upon the leasehold estate created by the Lease or any part thereof, unless it shall have received the written consent of the holders of not less than 66-2/3% of the aggregate principal amount of the Certificates of Interest then outstanding; and

(b) receive or collect or permit the receipt or collection of any rentals or Casualty Value payments prior to the date for the payment thereof provided for by the Lease (unless received without fault and promptly remitted to the Manufacturer) or assign, transfer or hypothecate (other than to the Manufacturer hereunder) any rentals or Casualty Value payments then due or to accrue in the future under the Lease.

24.3. The Vendee does hereby irrevocably constitute and appoint the Manufacturer its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rentals and other payments (except as set forth in Section 24.6 hereof) and sums which are assigned under Section 24.1 hereof and, following the occurrence of an Event of Default hereunder, full power to settle, adjust or compromise any claim thereunder as fully as the Vendee could itself do, and to endorse the name of the Vendee on all commercial paper given in payment or in part payment there, and in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of the Vendee or otherwise, which the Manufacturer may deem necessary or appropriate to protect and preserve the right, title and interest of the Manufacturer in and to such rentals and other payments and sums and the security intended to be afforded hereby.

24.4. This assignment being made only as security shall not subject the Manufacturer to, or transfer, or pass, or in any way affect or modify, the liability of the Vendee under the Lease, it being understood and agreed that notwithstanding this assignment, or any subsequent assignment, all obligations of the Vendee to the Lessee, shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Vendee. Further, the Vendee covenants and agrees that it will perform all its obligations to be performed under the terms of the Lease, and hereby irrevocably authorizes and empowers the Manufacturer, in its own name, or in the name of its nominee, or in the name of the Vendee, to perform or cause to be performed any such obligation.

24.5. Upon the full discharge and satisfaction of the full amount of the Conditional Sale Indebtedness, together with interest as herein provided and the performance of all of the Vendee's obligations herein contained, the assignment made hereby and all rights herein assigned to the Manufacturer shall cease and terminate, and the Lease shall revert to the Vendee.

24.6. There are expressly excepted and reserved from the assignment and security interest provided for in Section 23.1 above the following described properties, rights, interests and privileges:

(a) all payments of any indemnity under Section 6, 10.2 or 21 of the Lease which are payable to the Vendee for its own account;

(b) if an Event of Default under the Lease based on a breach of any covenant of the Lessee to pay any such indemnity or payment referred to under paragraph (a) of this Section 24.6 shall occur and be continuing, the right of the Vendee to declare that an Event of Default exists under the Lease and the right of the Vendee to exercise the remedies, but only those remedies, provided for in Section 14.2(a) of the Lease to enforce performance by the Lessee of any covenants of the Lessee to pay any such indemnity or payment directly to the Vendee or to recover damages for the breach thereof; and

(c) any insurance proceeds payable under insurance policies maintained by the Lessee pursuant to Section 11 of the Lease which by the terms of such policies or the terms of the Lease are payable directly to the Vendee for its own account.

## SECTION 25. LIMITATIONS OF LIABILITY.

25.1. It is expressly understood and agreed by and between the Vendee and the Manufacturer and their respective successors and assigns, anything in this Conditional Sale Agreement to the contrary notwithstanding, neither the Assignee nor any investor in the Conditional Sale Indebtedness nor the successors or assigns of any of said persons, shall have any claim, remedy or right to proceed against the Vendee in its individual corporate capacity or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of the Vendee for the payment of any deficiency or any other sum owing on account of the Conditional Sale Indebtedness or for the payment of any liability resulting from the breach of any representation, agreement or warranty of any nature whatsoever, from any source other than the Equipment and the security interest in the Lease granted pursuant to Section 24 hereof, including the sums due

and to become due under the Lease; and the Assignee by the execution of the Participation Agreement and the Investors in the Conditional Sale Indebtedness by acceptance thereof, waive and release any personal liability of the Vendee in its individual corporate capacity and any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of the Vendee for and on account of such indebtedness or such liability, and the Assignee and the Investors in the Conditional Sale Indebtedness agree to look solely to the Equipment and the security interest in the Lease granted pursuant to Section 24 hereof, including the sums due and to become due under the Lease for the payment of said indebtedness or the satisfaction of such liability; provided, however, nothing herein contained shall limit, restrict or impair the rights of the Investors in the Conditional Sale Indebtedness to accelerate the maturity of the Conditional Sale Indebtedness upon a default under this Conditional Sale Agreement; to bring suit and obtain a judgment against the Vendee on the Conditional Sale Indebtedness or to exercise all rights and remedies provided under this Conditional Sale Agreement or otherwise realize upon the Equipment and the security interest in the Lease granted pursuant to Section 24 hereof; provided, further, that nothing in this Section shall be construed to limit in scope or substance those representations and warranties of the Vendee in its individual capacity set forth in the Participation Agreement.

25.2. Without limiting the effect of Section 25.1 hereof, the obligations of the Vendee under Sections 2.4, 5, 6.1, 9.1, 10.1, 12.5, 15.2 and 15.7 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such undertakings, but if the same shall not be performed, they shall constitute the basis for an Event of Default hereunder pursuant to Section 14 hereof.

#### SECTION 26. EXECUTION.

This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by all of the parties hereto so long as at least one counterpart is signed by each party hereto. Although this Agreement is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers or representatives, thereunto duly authorized, and

their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

ACF INDUSTRIES, INC.

(Corporate Seal)

By \_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Assistant Secretary

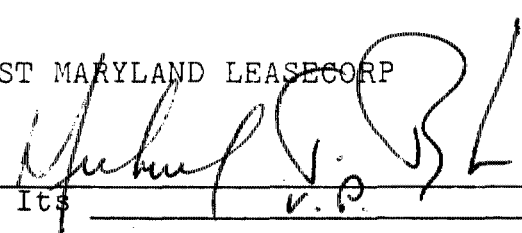
ORTNER FREIGHT CAR COMPANY

By \_\_\_\_\_  
Vice President

Attest:


\_\_\_\_\_  
Assistant Secretary

FIRST MARYLAND LEASECORP

By  \_\_\_\_\_  
Its \_\_\_\_\_  
V.P.

(Corporate Seal)

Attest:

  
\_\_\_\_\_  
Assistant Secretary  
VP-TRANS.

STATE OF NEW YORK    )  
                              ) SS  
COUNTY OF NEW YORK )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

(Seal)

My Commission Expires:

STATE OF OHIO                )  
                              ) SS  
COUNTY OF HAMILTON        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a Vice President of ORTNER FREIGHT CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

(Seal)

My Commission Expires:

STATE OF MARYLAND           )  
                                          )  
~~CITY~~                                  ) SS  
~~COUNTY~~ OF BALTIMORE       )

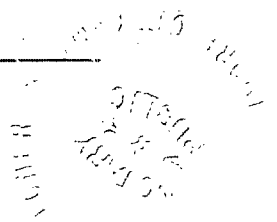
On this 19th day of April, 1979, before  
me personally appeared Michael T. Pyles, to me personally  
known, who, being by me duly sworn, says that he is a Vice  
President of FIRST MARYLAND LEASECORP, that one of the seals  
affixed to the foregoing instrument is the corporate seal of  
said corporation, that said instrument was signed and sealed  
on behalf of said corporation by authority of its Board of  
Directors, and he acknowledged that the execution of the foregoing  
instrument was the free act and deed of said corporation.

(SEAL)

Bonnie A. Toner  
Notary Public

My Commission Expires:

July 1, 1982.



SCHEDULE A

(to Conditional Sale Agreement)

MANUFACTURER ..... ACF Industries, Inc.

DESCRIPTION OF EQUIPMENT ..... 100 Covered Hopper Cars  
bearing Mark and Numbers  
MKT 400 to MKT 499,  
both inclusive

SPECIFICATIONS ..... ACF No. 78-OAO-115 of  
March 13, 1978

ESTIMATED PRICE ..... \$34,000

PLACE OF DELIVERY ..... Milton, Pennsylvania or such  
other place mutually acceptable  
to the Manufacturer, the Vendee  
and the Lessee

ESTIMATED DELIVERY DATES ..... December 1979 through January 1980

OUTSIDE DELIVERY DATE ..... March 31, 1980

SCHEDULE B

(to Conditional Sale Agreement)

MANUFACTURER .....	Ortner Freight Car Company
DESCRIPTION OF EQUIPMENT .....	100 Gondola Cars bearing Mark and Numbers MKT 12400 to MKT 12499, both inclusive
SPECIFICATIONS .....	OCN 1369-3-78, and amendments thereto
ESTIMATED PRICE .....	\$33,000
PLACE OF DELIVERY .....	Covington, Kentucky
ESTIMATED DELIVERY DATES .....	July - October, 1979
OUTSIDE DELIVERY DATE .....	December 31, 1979



SCHEDULE C

(to Conditional Sale Agreement)

AMORTIZATION SCHEDULE

(Payments Required Per \$1,000,000 Aggregate  
Amount of Conditional Sale Indebtedness)

<u>Payment No.</u>	<u>Portion Allocated to Interest</u>	<u>Portion Allocated to Principal</u>	<u>Total Payment</u>
1	26875.00	8222.03	35097.03
2	26654.03	8443.00	35097.03
3	26427.13	8669.90	35097.03
4	26194.12	8902.91	35097.03
5	25954.86	9142.17	35097.03
6	25709.16	9387.87	35097.03
7	25456.86	9640.17	35097.03
8	25197.79	9899.24	35097.03
9	24931.74	10165.29	35097.03
10	24658.55	10438.48	35097.03
11	24378.01	10719.02	35097.03
12	24089.94	11007.09	35097.03
13	23794.12	11302.91	35097.03
14	23490.36	11606.67	35097.03
15	23178.43	11918.60	35097.03
16	22858.12	12238.91	35097.03
17	22529.20	12567.83	35097.03
18	22191.44	12905.59	35097.03
19	21844.60	13252.43	35097.03
20	21488.44	13608.59	35097.03
21	21122.71	13974.32	35097.03
22	20747.15	14349.88	35097.03
23	20361.50	14735.53	35097.03
24	19965.48	15131.55	35097.03
25	19558.82	15538.21	35097.03
26	19141.23	15955.80	35097.03
27	18712.42	16384.61	35097.03
28	18272.08	16824.95	35097.03
29	17819.91	21908.48	39728.39
30	17231.12	22497.27	39728.39
31	16626.50	23101.89	39728.39
32	16005.64	23722.75	39728.39
33	15368.09	24360.30	39728.39
34	14713.41	25014.98	39728.39
35	14041.13	25687.26	39728.39
36	13350.79	26377.60	39728.39
37	12641.89	27086.50	39728.39

<u>Payment No.</u>	<u>Portion Allocated to Interest</u>	<u>Portion Allocated to Principal</u>	<u>Total Payment</u>
38	11913.94	27814.45	39728.39
39	11166.43	28561.96	39728.39
40	10398.83	29329.56	39728.39
41	9610.59	30117.81	39728.40
42	8801.18	30927.22	39728.40
43	7970.01	31758.38	39728.39
44	7116.51	32611.89	39728.40
45	6240.06	33488.33	39728.39
46	5340.07	34388.32	39728.39
47	4415.88	35312.51	39728.39
48	3466.86	36261.53	39728.39
49	2492.33	37236.06	39728.39
50	1491.61	38236.78	39728.39
51	463.99	17264.62	17728.61

Each Manufacturer for itself warrants that the Items of Equipment to be built by it will be built in accordance with the Specifications therefor and warrants that such Items of Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Lessee and not manufactured by the Manufacturer, in respect of which the Manufacturer hereby appoints and constitutes the Lessee, its agent and attorney in-fact to assert and enforce from time to time in the name of the Manufacturer but for the account of the Lessee as its interests may appear and in all cases at the sole cost and expense of the Lessee whatever claims and rights the Manufacturer may have against the manufacturer of the specialty) or workmanship under normal use and service, the Manufacturer's obligation under this Section being limited to making good at its plant any part or parts of any such Item of Equipment which shall within one year after the delivery of such Item of Equipment to the Lessee under the Lease, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective; provided, however, that this warranty shall not apply to (i) any components which shall have been repaired or altered unless repaired or altered by the Manufacturer or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of any such Item of Equipment, or (ii) any Item of Equipment which has been subject to misuse, negligence or accident. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE MANUFACTURER, EXCEPT FOR ITS OBLIGATIONS HEREUNDER AS LIMITED HEREBY, AND THE MANUFACTURER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT EXCEPT AS AFORESAID AND EXCEPT FOR PATENT INDEMNITIES CONTAINED IN SECTION 11 HEREOF. IN NO EVENT SHALL THE MANUFACTURER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR COMMERCIAL LOSS. The Manufacturer reserves the right to make changes in the design of, or add any improvements to, any Items of Equipment to be built by it at any time with the approval of the Vendee and the Lessee. The Manufacturer further agrees with the Vendee and the Lessee that acceptance of any Items of Equipment under Section 2.4 of the Conditional Sale Agreement shall not be deemed a waiver by the Vendee and the Lessee of any of their respective rights under the provisions of this paragraph.

It is hereby agreed that the Lessee shall be and it is hereby constituted a third party beneficiary to each of the covenants and agreements of the Manufacturer expressed above.

SCHEDULE A

(to Conditional Sale Agreement)

MANUFACTURER ..... ACF Industries, Inc.

DESCRIPTION OF EQUIPMENT ..... 100 Covered Hopper Cars  
bearing Mark and Numbers  
MKT 400 to MKT 499,  
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OUTSIDE DELIVERY DATE ..... March 31, 1980

SCHEDULE B

(to Conditional Sale Agreement)

MANUFACTURER .....	Ortner Freight Car Company
DESCRIPTION OF EQUIPMENT .....	100 Gondola Cars bearing Mark and Numbers MKT 12400 to MKT 12499, both inclusive
SPECIFICATIONS .....	OCN 1369-3-78, and amendments thereto
ESTIMATED PRICE .....	\$33,000
PLACE OF DELIVERY .....	Covington, Kentucky
ESTIMATED DELIVERY DATES .....	July - October, 1979
OUTSIDE DELIVERY DATE .....	December 31, 1979

Interstate Commerce Commission  
Washington, D.C. 20423

7/16/79

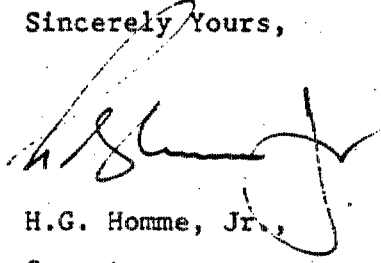
OFFICE OF THE SECRETARY

Gary Green  
Chapman & Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,  
49 U.S.C. 20(c), on 7/16/79 at 12:00pm,  
and assigned recordation number(s) 10628 & 10628-A 10629

Sincerely Yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)